

Senator David Vitter
Questions for the Record
Gina McCarthy Confirmation Hearing
Environment and Public Works Committee

Aggregation:

EPA has a policy of “aggregating” a number of different emissions points into a single stationary source. EPA’s regulations require that these emissions points be “contiguous or adjacent” to each other, yet EPA is implementing a policy, found nowhere in its regulations but based on a Memorandum that you drafted, that emissions points may be aggregated even if they are many miles apart if EPA finds them otherwise "interrelated".

EPA determines whether emissions points should be part of the same stationary source on a case-by-case basis by looking at three factors: whether they are under common control; located on one or more contiguous or adjacent properties; and whether they are in a single major industrial grouping (the same two-digit SIC code). The interpretation of adjacency to require a consideration of both proximity and interrelatedness is not the result of the guidance memo I issued, but rather is the position that EPA has taken for more than three decades of applicability determinations and guidance letters, in which the Agency considered proximity and interrelatedness in determining whether emission units are adjacent.

Recently, the U.S. Court of Appeals for the Sixth Circuit rejected EPA's interpretation, where EPA claimed that over a hundred gas wells and a processing plant, spread out over 43 square miles, were contiguous or adjacent to each other. Despite the court’s conclusion, EPA issued a December 2012 memo declaring that it would ignore the Sixth Circuit’s case in most states. Why does EPA insist in pursuing an interpretation of “aggregation” that is not in the regulations, that contradicts the common meaning of “contiguous and adjacent,” and flouts the decision of a court of appeals?

In EPA’s view, it is essential to preserve flexibility in determining the scope of a source based on a case-by-case analysis of the three factors. It is important to understand that EPA and states have made source determinations, at the request of the source, that aggregate smaller facilities into one larger one. By doing so, the source gains important flexibility to “net” its emissions over the larger facility, reducing or shuttering operations in one area while increasing others, without triggering permitting. For example, the State of Pennsylvania made a determination in 2012 to “aggregate” two refineries in Philadelphia which provided that source the flexibility it needed to remain operational. In another case, EPA Region 2 agreed with a request from an aluminum plant to consider two (formerly separate) plants as one (<http://www.epa.gov/region07/air/nsr/nsrmemos/alcoany.pdf>). In other cases, EPA has applied the three factor test and determined that adjacent sources are not part of the same stationary source, because while close together, they were not interrelated (<http://www.epa.gov/region07/air/nsr/nsrmemos/we1999.pdf>). In summary, a “one-size-fits-all” definition of adjacent that is based on a single bright line test of distance does not provide EPA, states, or sources the needed flexibility to define the scope of the source to support sources’ business needs.

If confirmed as EPA Administrator, will you commit to adopt the common sense and legally correct reasoning of the Sixth Circuit across the nation? Why shouldn't a common sense, legally defensible, dictionary definition of "adjacent" apply throughout the country? Will the agency publish guidance on this issue that makes this clear?

Outside the 6th Circuit, rather than using a one-size-fits-all approach in determining which nearby, commonly-controlled emitting units should be treated as one source, EPA will continue to apply the agency's decades-old approach of making case-by-case determinations based on a review of each facility's specific situation, including the relationship between the activities at the units. The agency is concerned that national application of the 6th Circuit decision would require EPA to treat as one source facilities that are nearby and under common control, even when their activities are completely unrelated.

Can you make a clear, unambiguous public statement that clarifies that efforts to comply with the utility MACT do not and will not make a facility subject to the new source performance standard for greenhouse gases?

Given that EPA's proposed carbon pollution standard does not cover modified sources and that new source performance standards generally exempt pollution control projects from being considered modifications, adding pollution control technology to a coal-fired power plant to comply with MATS would not subject that plant to a new source performance standard for greenhouse gases.

Will the agency publish guidance on this issue that makes this clear?

Guidance on this issue is not necessary because the proposed carbon pollution standard does not apply to existing sources.

At a hearing recently, Congressman Barton asked you how many people presented to American hospitals last year with mercury poisoning. What is the answer to that question?

EPA staff has informed me that mercury poisoning is not a reportable condition in the United States, and therefore, accurate statistics on the number of people presenting in clinical settings with mercury poisoning are not readily available. The 2011 Annual Report of the American Association of Poison Control Centers' National Poison Data System documented about 1,700 single exposures to mercury or compounds containing mercury. Most people in the United States are exposed to mercury when they eat fish and shellfish that are contaminated with methylmercury, an organic compound that can be formed when mercury is released to the environment. Most mercury exposures tend to be manifested in subtle, yet very serious, health effects such as neuro-cognitive deficits. For fetuses, infants, and children in the U.S., the primary concern of methylmercury exposure is impaired neurological development. Methylmercury exposure in the womb, which can result from a mother's consumption of fish and shellfish that contain methylmercury, can adversely affect a baby's growing brain and nervous system. Impacts on cognitive thinking, memory, attention, language, and fine motor and visual spatial skills have been seen in children exposed to methylmercury in the womb. Human biological monitoring by the Centers for Disease Control and Prevention and other health organizations shows that most people have blood mercury levels below a level associated with possible health

effects. However, these studies also consistently confirm that approximately 5% of childbearing-aged women have methylmercury levels in their blood at levels of potential concern.

Carbon Tax:

The IMF recently released a study that equated a lack of a carbon tax with a subsidy for fossil fuels.

Do you think that is correct? Do you favor a carbon tax, imputed or direct?

I am not familiar with the IMF study to which your question refers so I am not in a position to comment on the study. It should be noted that the Administration has not proposed a carbon tax, nor is it planning to do so. In addition, I would note that as Administrator of the Environmental Protection Agency this specific issue would not be in my purview.

What do you think the social cost of a ton of carbon is?

The social cost of carbon (SCC) is an estimate of the net present value of the flow of monetized damages from an incremental increase in carbon dioxide emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. The Interagency Working Group on the Social Cost of Carbon reported central estimates in 2020 of 6.8 to 41.7 dollars per metric ton in 2007 dollars, depending upon the discount rate, and up to 80.7 for extreme damages.

As you know, the EPA led an interagency study a few years back to examine the social cost of carbon. They examined a range of numbers, none of which were particularly justifiably. They also used one discount rate to assess costs and one to assess benefits, which is, I believe, contrary to OMB practice and guidance. Will you initiate such a study again? Will you open the study to notice and comment?

EPA participated in the Interagency Working Group on the Social Cost of Carbon led by the Council of Economic Advisors and the Office of Management and Budget. The technical support document from interagency working group set a “goal of revisiting the SCC values within two years or at such time as substantially updated models become available...”

GHG:

What is the right target for United States emissions of greenhouse gases? How many tons a years should we be emitting to minimize our exposure to harmful global warming?

In Copenhagen in 2009, the U.S. committed to reducing U.S. greenhouse gas emissions in the range of 17 percent by 2020 from 2005 levels. Over the longer term, the science indicates that the U.S. and other major emitting countries will need to reduce emissions further to mitigate the most severe impacts of climate change.

Alternatively, what concentration of greenhouse gases in the atmosphere is harmful to human health?

EPA addressed the public health consequences of greenhouse gases in the atmosphere in the 2009 Endangerment Finding, where EPA found that elevated concentrations of the well-mixed greenhouse gases in the atmosphere may reasonably be anticipated to endanger the public health and to endanger the public welfare of the current and future generations. Greenhouse

gases impact human health by altering the climate. In the recent D.C. Circuit Court decision (*Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012)) regarding the 2009 Endangerment Finding, the Court found that “EPA had before it substantial record evidence that anthropogenic emissions of greenhouse gases “very likely” caused warming of the climate over the last several decades. EPA further had evidence of current and future effects of this warming on public health and welfare. Relying again upon substantial scientific evidence, EPA determined that anthropogenically induced climate change threatens both public health and public welfare.” The Court upheld EPA’s approach of relying “on a substantial record of empirical data and scientific evidence, making many specific and often quantitative findings regarding the impacts of greenhouse gases on climate change and the effects of climate change on public health and welfare” in order to make its determination of endangerment.

Where are the most cost-effective reductions of greenhouse gases likely to be?

EPA analysis has shown that there are numerous cost-effective reduction opportunities across the economy. As indicated in my testimony before the Committee, EPA’s regulations addressing greenhouse gas emissions from light- and heavy-duty vehicles are projected to achieve dramatic reductions in greenhouse gas emissions while at the same time substantially reducing oil consumption and saving consumers billions of dollars at the pump. EPA economy-wide and electric power sector models show that electric power supply and use represents the largest source of emissions abatement potential. Additionally, the EPA report, *Global Mitigation of Non-CO2 Greenhouse Gases* (EPA 430-R-06-005, 2006) demonstrates that non-CO2 greenhouse gas mitigation can play an important role in climate strategies, and that methane mitigation from the energy, waste, and agriculture sectors can provide a substantial quantity of cost effective reduction opportunities. Finally, energy efficiency also offers a low cost energy resource with the potential to reduce greenhouse gas emissions across the economy. For example, consumers, home owners, building owners and operators, and industrial partners have saved more than 1.8 billion metric tons carbon dioxide equivalent over the past twenty years of the ENERGY STAR program.

Can you give me any assessment of the additional mortality (deaths) or morbidity associated with the emissions of greenhouse gases? I know that EPA is always very precise about the mortality and morbidity associated with ozone and particulate matter and even mercury. Does it have the same sort of analytical rigor with respect to greenhouse gases?

EPA is committed to providing scientific and analytic rigor with regard to any of the agency’s greenhouse gas and climate change analyses. The peer-reviewed scientific assessments are clear that human health is at risk due to greenhouse gas-induced climate change , including through worsened air quality, increases in temperatures, changes in extreme weather events, increases in food and water borne pathogens, and changes in aeroallergens. Increases in ambient ozone are expected to occur over broad areas of the country, and they are expected to increase serious adverse health effects in large population areas that are and may continue to be in nonattainment. There are existing individual studies that quantify mortality and other health effects due to climate change, but this is an emerging field and we expect our tools will continue to improve.

If greenhouse gases are air pollutants, and if they endanger public health, and if they come from numerous large, area, and minor sources, why has the agency not chosen to regulate them under the

NAAQS program? If we believe GHGs are deleterious to public health, isn't the appropriate response to promulgate a standard above which humans are at risk?

Greenhouse gases are air pollutants under the CAA but they are different from other air pollutants in many important ways, and thus the application of the NAAQS approach to greenhouse gases would be challenging. EPA therefore is pursuing and exploring other common-sense approaches to using the CAA to address greenhouse gas emissions.

NSPS – Existing:

Has the agency done any legal analysis of the challenge of regulating greenhouse gases from powerplants under 111(d)? Can you share it with me?

At this time, EPA is working to finalize the proposed NSPS for new sources. The agency is not currently developing any existing source GHG regulations. In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency would ensure, as it always seeks to do, ample opportunity for States, the public and stakeholders to offer meaningful input on potential approaches.

NAAQS:

Can you identify language in Section 109 of the Clean Air Act that specifically prohibits the consideration of costs in the setting of National Ambient Air Quality Standards?

The U.S. Supreme Court held in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting national ambient air quality standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. The Court's reasoning is found at 531 U.S. 464-472.

As part of the standard setting process, is EPA prevented from comparing the health and other effects of a considered NAAQS standard with the health and other effects of unemployment and economic dislocation?

In *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), the Supreme Court held that EPA may not consider the costs of implementing the standards in setting NAAQS that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act. The Supreme Court rejected the argument that EPA could consider costs of implementation because health and other effects could stem from implementation strategies. While EPA cannot consider the costs of implementing the standards when setting the NAAQS, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans (SIPs) to implement the NAAQS. Likewise EPA has discretion to consider costs in many of the CAA provisions authorizing EPA to set standards to control emissions.

Leaving aside the question of cost, how does EPA assess the health benefits associated with economic dislocation caused or likely to be caused by the new standards? Certainly there is some. Certainly it has effects or potential effects on human health. How are they quantified when you are making health-based assessments for revised national ambient air quality standards?

The over 40-year history of the Clean Air Act is one in which reducing harmful air pollution has gone hand in hand with economic growth and job creation. EPA's benefits assessments focus on

the benefits associated with reductions in air pollution. EPA acknowledges in the regulatory impact analyses that there are unquantified benefits and disbenefits that are not included in our estimates of total net benefits.

The Centers for Disease Control has cited numerous triggers for asthma attacks that are unrelated to air quality. How is that data factored into determination of revised NAAQS?

The Integrated Science Assessment (ISA) for ozone evaluates all of the scientific information regarding the relationship of ozone to asthma in light of other asthma triggers. It is the purpose of the ISA to reach determinations regarding whether ozone exposure is causally related to health outcomes, including asthma attacks. This information is taken into account in the agency's decisions on the current and potential alternative standards.

Will you commit to working with the CDC and others outside the agency to ensure that we are using the very best science before you set the new ozone standard?

EPA is committed to using the best available science in its NAAQS reviews, which is why the process ensures extensive peer-review by EPA's Clean Air Scientific Advisory Committee and public comment on the Integrated Science Assessment (ISA), the Risk and Exposure Assessments (REAs) and the Policy Assessment (PA), which the agency relies upon in making judgments on the current and potential alternative standards. CDC has been involved in the ongoing ozone NAAQS review.

If you do lower the standard for ozone, what do you imagine will be the compliance burden on the States? In other words, what portion of the additional emissions reductions will be as a result of things like fleet turnover, and what will localized compliance options look like?

Implementation of the NAAQS will be achieved through a combination of state plans and federal measures. The states' obligations are set forth in Title I of the Clean Air Act.

If the sole concern of a NAAQS standard-setting exercise is human health (and a protective margin for it), why is setting the standard at background levels not always the best and simplest answer?

The Clean Air Act requires that EPA to establish a primary NAAQS at a level that is requisite to protect public health with an adequate margin of safety. In setting standards that are 'requisite' to protect public health and welfare, as provided in CAA section 109(b), the EPA's task is to establish standards that are neither more nor less stringent than necessary for these purposes. Considering what standards are requisite to protect public health with an adequate margin of safety requires public health policy judgments that neither overstate nor understate the strength and limitations of the evidence or the appropriate inferences to be drawn from the evidence. The Administrator must weigh the available scientific and technical information, and associated uncertainties, to reach a final decision on the appropriate standard level. For example, in considering the requirement for an adequate margin of safety, the EPA considers such factors as the nature and severity of the health effects involved, the size of at-risk population(s), and the kind and degree of the uncertainties that must be addressed.

If the sole concern is health, why is OMB involved? Why are there any policy considerations at all? If the dose is the only relevant metric, why is the Administrator involved? What considerations do OMB, the Administrator, and all others involved in the process bring to bear?

The Clean Air Act directs the Administrator of EPA to set primary standards that, in the Administrator's judgment, are requisite to protect public health, including the health of sensitive subpopulations, with an adequate margin of safety and secondary standards that are requisite to protect the public welfare. The Clean Air Act requires EPA to periodically review the body of scientific evidence on the effects of air pollution on public health and welfare, and, based on that, determine whether to revise the standards to meet the requirements of the Act. This is required every five years. See response to the related question for discussion of the public health policy judgments involved in setting a primary NAAQS. OMB review of federal regulations occurs in accordance with Executive Order 12866.

RFS

Is ethanol good for the economy; does it make sense economically?

Ethanol plays a role in a number of programs and standards that EPA implements under the Clean Air Act, such as the RFS program. EPA does not have a position on ethanol beyond the scope of our responsibilities in implementing CAA provisions.

Do you think we will have 21 billion of gallons of advanced cellulosic available by 2030?

Under the Energy Independence Security Act (EISA) of 2007, which amended the Renewable Fuel Standard Program in the Clean Air Act, Congress established volume mandates of 36 billion gallons of renewable fuel by 2022, which includes 16 billion gallons of cellulosic biofuel, and 21 billion gallons of total advanced biofuel (including cellulosic biofuel). The law requires EPA to set annual volume standards designed to achieve the total renewable fuel requirement under EISA. It also requires EPA to set the volume of cellulosic biofuel for any calendar year at the projected volume of cellulosic biofuel production. It would be premature to judge whether this volume level is feasible for 2030 at this time.

PM

What percentage of the health benefits claimed or projected for all rules related to air emissions proposed in the last five years are the result of lowered emissions of particulate matter?

EPA strives to quantify all of the anticipated benefits for our air rules. Pollution controls often reduce multiple pollutants, leading to significant co-benefits from the application of those controls. For example, pollution control devices, such as scrubbers reduce SO₂ emissions, also provide significant PM_{2.5} co-benefits. In some cases, EPA does not have the data to quantify all of the benefits associated with reducing air pollution, which prevents EPA from quantifying all the benefits associated with its rules. The agency does not have the specific calculation you request readily available.

Has the agency ever claimed that there would be health benefits for levels of particulate matter below the NAAQS for particulate matter? If so, explain.

EPA's approach to estimating the benefits of reducing fine particulate matter pollution is consistent with the best available science and advice from two Congressionally-created independent review boards, the Clean Air Scientific Advisory Committee and the Advisory Council on Clean Air Compliance Analysis. There are health benefits attributable to reducing

particulate matter pollution below the NAAQS and the agency does take those benefits into account. There is no scientific basis for ignoring those benefits. While the NAAQS is set at a level adequate to provide protection of public health – and should be neither more nor less stringent than necessary to do so – it is not set at a zero risk level.

Do you think the speciation of particulate matter is unimportant? Has the agency conducted any studies to examine the potential effect of the chemical composition of particulate matter? What have they shown?

Understanding the components of particulate matter is important. The Agency has invested in a PM_{2.5} speciation monitoring program since 1999 to provide ambient air data for tracking air quality and to support scientific studies. In addition, the EPA and other organizations (e.g., HEI, EPRI) have funded research on health effects related to PM composition. In the PM NAAQS review completed in 2012, the Agency concluded that the currently available scientific information continues to provide evidence that many different components of the fine particle mixture as well as groups of components associated with specific source categories of fine particles are linked to adverse health effects. However, the scientific evidence is not yet sufficient to allow differentiation of those components or sources that are more closely related to specific health outcomes nor to exclude any component or group of components from the mix of fine particles included in the PM_{2.5} indicator.

Have you or anyone at the agency (to your knowledge) ever asked or in any solicited an NGO or other organization or person to petition or sue the agency?

Response: No.

In the last five years, how many petitions or lawsuits that have subsequently been settled have been initiated by entities or persons who are not regulated by the agency? How many of those settlements have included requirements on the agency to promulgate a rule or alter the schedule of a rule already being promulgated?

In the last five years, how many petitions or lawsuits that have subsequently been settled have been initiated by entities or persons who are regulated by the agency? How many of those settlements have included requirements on the agency to promulgate a rule or alter the schedule of a rule already being promulgated?

Response (to two questions above): The EPA is sued hundreds of times a year and many environmental statutes include provisions that allow for any citizen to file a petition or commence a civil action against the agency whether or not they are directly regulated under a particular standard or rule. EPA does not enter into settlement agreements that purport to provide the Agency with a new authority. Nor does EPA commit in settlement agreements or consent decrees to any final, substantive outcome of a prospective rulemaking or other decision-making process.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

Your predecessor indicated that the new automobile mandates would add “a little upfront” cost to cars. Yet in its own documents the federal government estimates that the additional cost for a new car will increase \$3200 on average as a result of the mandate. How would you characterize that amount?

The estimated average additional cost of the vehicle in 2025 (estimated at \$1800 over the 2016 standards, or about \$3,000 over model year 2011) will be more than offset by an estimated \$8,000 in fuel cost savings to the consumer over the lifetime of the vehicle.

Who should be primarily responsible for designing automobile mandates, EPA, DOT, or California?

EPA and DOT act under their respective statutory authorities, the Clean Air Act (CAA) and the Energy Policy and Conservation Act (EPCA) to promulgate vehicle emissions standards (CAA) and corporate fuel economy standards (EPCA). In the Clean Air Act, Congress included preemption waiver provisions allowing California to have a state new motor vehicle emissions program, provided certain statutory requirements are met.

How regressive are the costs imposed by environmental regulations? Has the agency ever examined that?

Response: I have always been very sensitive to the costs of regulations and have worked hard to find flexibilities where I can that help us to achieve environmental and public health benefits at a lower cost. At the same time we must be sensitive to two other points. First, the costs imposed by pollution control standards are a small component of the overall costs of goods and services. For example, even with the MATS rule in place, electricity prices are projected to remain well within their historical range of variability. Other rules, such as our Light Duty Vehicle standards for GHG emissions, can actually save consumers money over the life of a vehicle. Second, we must also keep in mind that the impacts of pollution often fall heavily on lower income individuals and protecting them can help reduce costs for medical treatment and missed work. If confirmed, I commit to continue to be sensitive to both the costs and benefits of our regulations for all Americans, including lower income families.

How concerned are you about the growing reliance of utilities on natural gas to fire powerplants? The simple reality is that natural gas is intensely volatile with respect to price. It always has been and it probably always will be. Coal, on other is very stable with respect to price. Do you think people will

blame the agency when their electricity prices start to climb or, worse, gyrate? How concerned are you about public backlash against the agency eroding its ability to do its important work.

Response: I believe, as does the Administration, that coal will remain one of our nation's important sources of energy. At the same time, our nation is fortunate to have a broad range of domestic energy sources, which includes not only coal, but also natural gas, wind, solar and nuclear among others. Utilization of all these energy sources through an all of the above energy strategy will help ensure that Americans continue to have access to clean, reliable and affordable electricity.

How many people at the agency/among your direct reports have ever worked in the regulated community?

EPA employees have a diverse and complementary set of career experience, including industry, non-profit, education and research. My experience suggests that a substantial proportion of EPA staff, including many of those who report directly to me, have worked in the private sector, including in sectors regulated by the agency.

How many discretionary rulemakings, that is, those not explicitly required by statute, is the agency undertaking currently?

Response: EPA only conducts rulemakings as authorized by statute. The rule of law, along with sound science and transparency, is one of EPA's core values and, if I am confirmed, it will continue to guide all EPA action.

Would it be helpful if Congress gave the agency more specific instructions in statute?

Response: I am not aware that the Administration is seeking specific legislative changes at this time; however, if confirmed, I would always be happy to work with Congress to provide input into the legislative process as appropriate.

Would it be worthwhile for the agency to conduct a "look-back" at the costs and benefits of regulations encoded over the years? Would it be wise to include stakeholders in that process?

Response: EPA has conducted a peer-reviewed retrospective study on the benefits and costs of the Clean Air Act; "The Benefits and Costs of the Clean Air Act, 1970 to 1990" was issued in 1997. In that study EPA found that, by 1990, the differences between the scenarios were so great that, under the so-called "no-control" case, an additional 205,000 Americans would have died prematurely and millions more would have suffered illnesses ranging from mild respiratory symptoms to heart disease, chronic bronchitis, asthma attacks, and other severe respiratory problems. As a result, the monetized benefits

massively outweighed the costs. It is my understanding that the public was given an opportunity to comment during the development of the study. More recently, as part of E.O. 13563, EPA is taking additional steps to improve environmental regulation by retrospectively examining the process and factors that affect the estimated costs of regulations. My understanding is that a draft report of several case studies is currently undergoing review by the Scientific Advisory Board, in a process that involved input from outside stakeholders, such as the American Forest and Paper Association. If confirmed, I would look to continue an open dialog with stakeholders about the impacts of already-promulgated rules and ways in which EPA can do a better job estimating both costs and benefits going forward.

Should the federal government annually estimate the costs and benefits of all of its regulations?

Response: It is my understanding that OMB annually prepares a Report to Congress on the Benefits and Costs of Federal Regulations as required by the Regulatory-Right-to-Know Act. Based on estimates from Federal Agencies, the OMB Report summarizes the quantified and monetized benefits and costs of major Federal regulations reviewed by OMB over the previous ten years, and highlights the rules from the most recent year.

Do you favor the Sanders Boxer legislation? Do you think it is directionally correct?

Response: The Administration has not proposed a carbon tax, nor is it planning to do so. The President has repeatedly called on Congress to act to address the growing threat posed by climate change. In the State of the Union, the President made clear that while he still expects Congress to act on this vital issue, but if Congress will not take action on this important issue he will continue to build on the progress underway by his Administration to confront this threat.

Energy Reliability:

Since 2010 demand for natural gas has outpaced the delivery capacity of natural gas infrastructure. While coal plants keep a pile of coal on site for generation, gas plants tend to receive fuel as it is needed. During severe weather conditions -whether cold, hot or storms – there is great value in a “coal pile” that can be deployed at those times. If it were only market conditions, or the current lower price of natural gas, coal plants would not be closed – utilities would simply run gas plants more, run coal plants less but keep them in the generation mix as an option for future needs. Recent experience in New England has shown that electric reliability is challenged during these weather related events. Electricity prices in New England were four to eight times higher than normal during a recent snowstorm as the region’s overwhelming reliance on natural gas for power collided with a surge in demand for heating. Are you concerned that a major emergency back-up resource – the coal pile – will not be available in future weather events/emergencies?

EPA's Clean Air Act power plant rules provide flexibility to regulated entities to help ensure a path forward for generating units of all types. EPA analyses conducted in support of its power plant rules project that fuel diversity will be maintained in the future, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis has shown that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA also takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting its analyses. EPA works closely with DOE, FERC, grid planning authorities and other entities with expertise related to electric reliability to help ensure that the agency's rules are implemented in a manner consistent with maintaining electric reliability.

Are you concerned that regions of the country, like New England that rely on a single fuel source for the bulk of its power leave the region open to more supply and price disruptions versus a region with a diverse fuel mix?

EPA's Clean Air Act power plant rules provide flexibility to regulated entities to help ensure a path forward for generating units of all types. The agency has conducted detailed analysis to support its actions. These analyses project that fuel diversity will be maintained in the future, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis has shown that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA also takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting its analyses. EPA works closely with DOE, FERC, grid planning authorities and other entities with expertise related to electric reliability to help ensure that the agency's rules are implemented in a manner consistent with maintaining electric reliability.

How many electricity reliability experts are on EPA's staff in the Office of Air and Radiation? In the Agency as a whole?

EPA has significant expertise with regard to analysis of the effects of environmental regulation on the power sector, and has examined the impact of agency rules on resource adequacy and the reliable operation of the sector. In addition, EPA has worked closely with a range of entities directly charged with reliability responsibilities, including DOE and FERC as well as state regulatory authorities and grid planning authorities, to help ensure that EPA rules are developed and implemented in a manner consistent with maintaining electric reliability.

During extreme weather conditions – whether cold, hot or hurricane – there is great value in a “coal pile” that can be deployed at those times. If it were only market conditions, or the current lower price of natural gas, coal plants would not close – utilities would simply run gas plants more, run coal plants less but keep them in the generation mix for future needs. Electric reliability is challenged during exactly these weather related events. Are you concerned that a major emergency back-up resource– that “coal pile” – will not be available in future weather emergencies?

EPA's Clean Air Act power plant rules provide flexibility to regulated entities to help ensure a path forward for generating units of all types. The agency has conducted detailed analysis to support its actions. These analyses project that fuel diversity will be maintained in the future,

helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis has shown that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA also takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting its analyses. EPA works closely with DOE, FERC, grid planning authorities and other entities with expertise related to electric reliability to help ensure that the agency's rules are implemented in a manner consistent with maintaining electric reliability.

CCS:

In March of 2012, EPA proposed New Source Performance Standards (NSPS) for CO₂ for new coal, oil and natural-gas fired power plants. As proposed, the regulation would effectively prohibit the construction of new coal fired power plants.

EPA's proposal for new power plants abandons decades of precedence under the Clean Air Act (CAA) by setting one standard for all fuel types used in electricity generation. Historically, EPA considered each fuel type in a separate category with a separate standard. In the proposal all the fuel choices (coal, oil, and natural gas) are included in one overarching category/standard. The standard is that for natural gas, which in reality will be impossible for coal and oil to meet. In other words, the required "best demonstrated technology" for all categories to achieve the emission limitation is a natural gas combined cycle plant. New coal fired power plants would have to utilize carbon capture and storage (CCS) technologies that currently do not exist.

EPA makes several statements and assumptions regarding CCS in the NSPS proposal including that new coal fired units could comply with the rule through a 30 year averaging option that would allow them to deploy CCS in 11th year of operation and average emissions over a 30 year span. Is CCS commercially feasible today?

CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO₂ capture, compression, transportation and storage) have already been implemented at commercial scale.

Is there a legal and regulatory framework available to handle the sequestration of CO₂ captured through CCS? Is there liability and insurance framework in place?

For over 5 years, EPA has worked to establish a regulatory framework under the Safe Drinking Water Act (SDWA) and Clean Air Act (CAA) to facilitate CCS deployment. Under SDWA and through the Underground Injection Control Program, EPA established minimum Federal requirements to ensure that geologic sequestration wells are appropriately constructed, tested, monitored, and closed to ensure protection of drinking water. Under the CAA and through the Greenhouse Gas Reporting Program, EPA outlined requirements for quantifying the amount of CO₂ captured and geologically sequestered. With respect to liability and insurance, the 2010 Interagency Task Force on Carbon Capture and Storage found that existing mechanisms related to long-term liability could be adequate to facilitate the initial commercial-scale CCS projects, and projects have been proceeding under existing laws.

Gasoline Blends:

E0 is now the test fuel and E10 is the predominant gasoline blend in the market. Given this reality, why is EPA pushing E15 as the new certification fuel now?

Vehicles must be tested under conditions that reflect conditions they experience in-use. Since the proposed Tier 3 standards would phase in from 2017-2025 this would mean in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether E10 should be used for the certification test fuel.

Would it not be prudent for EPA to wait and see how E15 performs in the marketplace prior to mandating its use as the new certification fuel?

EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the Agency is also seeking comment on whether E10 should be the federal certification test fuel. We will fully consider comments from stakeholders and the public before making a final decision.

You have been working on a Tier 3 rule for some time, when was the decision made to propose E15 as a certification fuel? Please provide the Committee with a list of all meetings or contacts with non-governmental entities, as well as any associated records and documents (whether internal EPA records or documents or otherwise) with regard to the issue of mandating E15 as a certification fuel prior to the release of the proposed rule.

Consideration of the need to change the certification test fuel to include ethanol goes back to at least 2006 as ethanol use began increasing dramatically. During this multi-year period, the topic was discussed on numerous occasions with all relevant stakeholders, including the vehicle manufacturers, refiners, ethanol producers, nonroad engine manufacturers, the California Air Resources Board, State organizations, and NGOs. EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA further anticipates that the agency will again have numerous discussions with many stakeholders in the post-proposal timeframe prior to making any decision for the final rule, and all meetings and comments from stakeholders will be placed in the rulemaking docket. EPA will fully consider comments and feedback from stakeholders and the public before making a final decision. With regard to your request for documents, EPA staff informs me that the appropriate protocol is to make such a request through a separate letter to the agency. EPA will respond appropriately to any such request.

Please provide the Committee with a detailed written analysis regarding how finalizing E15 as a certification fuel would affect EPA's assessment of future waiver requests for higher ethanol blends under Clean Air Act section 211(f)(4).

Waiver requests under section 211(f)(4) for ethanol blends higher than E15 would need to show that the fuel or fuel additive at issue will not cause or contribute to the failure of an engine or vehicle to achieve compliance with the emission standards to which it has been certified over its useful life. The assessment would look, for example, at the levels of emissions when tested on the higher ethanol blend compared to emissions when tested on the fuel used for new vehicle certification. If E-15 were the certification fuel, then for those vehicles E15 would be used as the

reference or baseline test fuel. This would not change the issue that would be before EPA – determining whether the higher ethanol blend caused or contributed to the vehicle violating the emissions standards.

Has EPA ever previously required changes in certification fuel prior to the introduction of a fuel into the mass market?

EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. We will fully consider comments from stakeholders and the public before making a final decision.

Last year, the D.C. Circuit ruled that petitioners did not have standing to challenge EPA’s decision to approve E15. The court did not rule on the merits, but judges on the panel expressed concerns over EPA’s interpretation of its Clean Air Act authority to grant a waiver for E15. Different affected parties have filed for certiorari at the Supreme Court. Will EPA wait to see what happens to these petitions prior to finalizing any changes to certification fuel if the Court grants certiorari?

During the rulemaking process, EPA expects to receive helpful comments on the issue of what level of ethanol to use in the fuel used for testing motor vehicles. It is premature to judge now what action EPA will take in the rulemaking based on the potential action the Supreme Court might take on petitions for certiorari on the D.C. Circuit’s decision on review of the E15 waiver. This is especially the case as the issues raised in the petitions to the Supreme Court involve jurisdiction for judicial review, and not the merits of the E15 waiver itself.

Does it concern you that the D.C. Circuit expressed serious concerns over the EPA’s interpretation of the Clean Air Act waiver provision, both at oral argument and in a dissenting opinion? How should this affect EPA’s approach to future waiver requests?

In the E15 waiver decision, EPA explained in detail its views on the authority to grant a partial waiver. The D.C. Circuit later rejected petitions for review on the grounds that the petitioners did not have standing, and the Court did not decide on the merits of EPA’s waiver decision. While one Judge expressed his view that EPA lacked authority for a partial waiver, there was no decision by the D. C. Circuit on this issue. In any future waiver proceeding, EPA will carefully consider this issue of authority to the extent it arises.

Your Tier 3 proposed rule would change the certification fuel that is used to test vehicles and engines for compliance with Clean Air Act standards. EPA is proposing to mandate that gasoline with 15% ethanol be used as certification fuel. Your rule describes this action as “forward looking” while admitting that E15 is now only commercially available in a limited number of fuel retailers. Further, in the Regulatory Impact Analysis (RIA) for your proposed rule you are also assuming that E85 use will be negligible in 2017 to 2030. Doesn’t this just affirm that your operating assumption is that consumers will be left with no choice but to use E15 whether they want to or not?

EPA is not mandating E15 and the market will determine what among the range of legal fuels are sold to satisfy customer demand. Regardless, since E15 is currently distributed from less than 20 of the approximately 150,000 retail stations nationwide, this would not appear to be a near-term concern. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts

and benefits of the Tier 3 proposal. We will continue to refine our analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Doesn't this mean that EPA doesn't consider E85 a viable option for meeting renewable fuel standard requirements?

EPA considers a wide range of renewable fuel types as we conduct assessments for the annual RFS volume standards as required under the CAA. E85 is one of several means that can be used to deliver renewable fuel volumes required to meet the renewable fuel standard requirements. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. We will continue to refine our analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

EPA has touted national uniformity in many areas of mobile source regulation, why have you proposed E15 as a federal certification fuel when it cannot be used as such in California?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time we are seeking comment on whether we should finalize E10 for certification test fuel. If we finalize E15 as the certification fuel, the agency intends to allow use of E10 as the certification test fuel through 2019.

In EPA's proposed 316(b) rule EPA has adopted starkly different approaches to managing "impingement" and "entrainment" at existing cooling water intake structures. For entrainment, EPA appropriately adopted a site-specific approach, recognizing that (a) existing facilities already have measures in place to protect fish, (b) further measures may or may not be needed, and (c) the costs, benefits, and feasibility of such measures have to be evaluated at each site. Yet for impingement, EPA adopted rigid, nationwide numeric criteria that appear unworkable and in many cases unnecessary. In a notice of data availability issued last year, EPA signaled that it would consider a more flexible approach for impingement. In the final rule that is due this summer, would you support replacing the original impingement proposal with a more flexible approach that pre-approves multiple technology options, allows facility owners to propose alternatives to those options, and provides site-specific relief where there are de minimis impingement or entrainment impacts on fishery resources or costs of additional measures would outweigh benefits?

Response: It is my understanding that EPA explicitly discussed possible changes to the proposed 316(b) rule's impingement standard in the NODA published in the Federal Register on June 11, 2012 and that

EPA is carefully reviewing those comments as the agency develops the final rule. If confirmed, would be willing to look closely at flexibilities for compliance with the impingement standard.

In EPA's proposed 316(b) rule, EPA has correctly NOT required existing facilities to retrofit "closed cycle" systems such as cooling towers or cooling ponds if the facilities do not already have such systems, because such retrofits are not generally necessary, feasible, or cost effective. At the same time, facilities that do have closed-cycle systems have long been viewed as satisfying the requirements of section 316(b). Yet in the proposed rule, EPA has defined "closed cycle" cooling much more narrowly for existing facilities than EPA did for new facilities several years ago, thereby excluding a number of facilities. And even for the facilities that qualify, EPA is still imposing new study and impingement requirements. In the final rule that is due this summer, would you support a broader definition of closed-cycle cooling and measures that more fully view these facilities as compliant?

Response: My understanding is that EPA explicitly discussed the proposed 316(b) rule's definition of closed cycle cooling in the NODA published in the Federal Register on June 11, 2012. If confirmed, I look forward to working towards an appropriate definition for closed cycle systems.

How does EPA intend to utilize its final stated preference report? If EPA intends to use it in the final rule, what process will EPA undergo to address concerns raised by stakeholders about the applicability and appropriateness of its use?

Response: It is my understanding that EPA is still reviewing the peer-review comments on the 316(b) rule's stated preference study as well as concerns raised by stakeholders in comments. EPA would need to complete that review before it can make any decisions about applicability and appropriateness of the study results.

Has EPA ever investigated a plant closure or reduction in employment to see what role, if any, the administration or enforcement of the Clean Air Act played?

CAA section 321 authorizes the Administrator to investigate, report and make recommendations regarding employer or employee allegations that requirements under the Clean Air Act will adversely affect employment. In keeping with congressional intent, EPA has not interpreted this provision to require EPA to conduct employment investigations in taking regulatory actions. Section 321 was instead intended to protect employees in individual companies by providing a mechanism for EPA to investigate allegations that specific requirements, including enforcement actions, as applied to those individual companies, would result in lay-offs. EPA has found no records indicating that any Administration since 1977 has interpreted section 321 to require job impacts analysis for rulemaking actions. EPA does perform detailed regulatory impact analyses (RIAs) for each major rule it issues, including cost-benefit analysis, various types of economic

impacts analysis, and analysis of any significant small business impacts. Since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine RIAs conducted for each major rule. The agency could not find any records of any requests for section 321 investigation of job losses alleged to be related to regulation-induced plant closure.

Who made the decision to force Battelle to drop the AAPCA contract? Were you aware of EPA's course of action before or after EPA's ultimatum to Battelle was made? When you did become aware of this action? Have you considered how this will set a precedent in all future contracting actions? Does EPA's policy affect EPA contractors that have contracts with environmental organizations or industry?

Neither I nor other Office of Air and Radiation managers were involved in this decision. My understanding is that the decision was made by EPA's Office of Acquisition Management in accordance with U.S. Government contracting regulations relating to conflicts of interest.

Aggregation

Recently, the U.S. Court of Appeals for the Sixth Circuit rejected EPA's interpretation with respect to aggregation, where EPA claimed that over a hundred gas wells and a processing plant, spread out over 43 square miles, were contiguous or adjacent to each other. Despite the court's conclusion, EPA issued a December 2012 memo declaring that it would ignore the Sixth Circuit's case in most states. Why does EPA insist in pursuing an interpretation of "aggregation" that is not in the regulations, that contradicts the common meaning of "contiguous and adjacent," and flouts the decision of a court of appeals?

EPA believes that it is essential to preserve flexibility in determining the scope of a source based on a case-by-case analysis of the three factors. EPA believes its historical interpretation of the "contiguous or adjacent" language is a reasonable interpretation of that phrase in the regulations. It is important to understand that EPA and states have made source determinations, at the request of the source, that aggregate smaller facilities into one larger one. By doing so, the source gains important flexibility to "net" its emissions over the larger facility, reducing or shuttering operations in one area while increasing others, without triggering permitting. For example, the State of Pennsylvania made a determination in 2012 to "aggregate" two refineries in Philadelphia which provided that source the flexibility it needed to remain operational. In another case, EPA Region 2 agreed with a request from an aluminum plant to consider two (formerly separate) plants as one (<http://www.epa.gov/region07/air/nsr/nsrmemos/alcoany.pdf>). In other cases, EPA has applied the three factor test and determined that adjacent sources are not part of the same stationary source, because while close together, they were not interrelated (<http://www.epa.gov/region07/air/nsr/nsrmemos/we1999.pdf>).

If confirmed as EPA Administrator, will you commit to adopt the common sense and legally correct reasoning of the Sixth Circuit across the nation? Why shouldn't a common sense, legally defensible, dictionary definition of "adjacent" apply throughout the country?

Response: Outside the 6th Circuit, rather than using a one-size-fits-all approach in determining which nearby, commonly-controlled emitting units should be treated as one source, EPA will continue to apply the agency's decades-old approach of making case-by-case determinations based on a review of each facility's specific situation, including the relationship between the activities at the units. The agency is concerned that national application of the 6th Circuit decision would require EPA to treat as one source facilities that are nearby and under common control, even when their activities are completely unrelated.

Automobile Mandate:

The basic fuel economy statute, the Energy Policy Conservation Act (EPCA), expressly preempts state laws or regulations "related to" fuel economy standards. This is a very broad statement of preemption. It prohibits states not only from adopting fuel economy standards, but also from adopting laws or regulations "related to" fuel economy standards. Do you agree?

EPA can only deny a waiver of the express preemption provision in CAA section 209(a) based on one of the criteria listed in section 209(b). EPA's waiver decisions under section 209(b) are based solely on an evaluation of those criteria, and evaluation of whether California emission standards are preempted under EPCA is not among those specified criteria. As a result, in making waiver decisions EPA takes no position regarding whether or not California's GHG standards are preempted under EPCA.

For the sake of argument, let's assume that greenhouse gas motor vehicle standards, like those based on California's motor vehicle emissions law, AB 1493, are "related to" fuel economy standards. I know you don't think they are, but for now, let's assume there is a relationship to fuel economy standards. If there was, would it be lawful for California to implement AB 1493? Would it be proper for the EPA to grant California a waiver to implement it?

EPA can only deny a waiver based on one of the criteria listed in section 209(b) of the Clean Air Act. EPA's waiver decisions under section 209(b) are based solely on an evaluation of those criteria, and evaluation of whether California emission standards are preempted under EPCA is not among those specified criteria. As a result, in making waiver decisions EPA takes no position regarding whether or not California's GHG standards are preempted under EPCA.

Key agency documents and even AB 1493 itself imply that motor vehicle greenhouse gas emission standards and fuel economy standards are closely related. EPA and NHTSA acknowledge in their May 2010 Tailpipe Rule that no commercially available technologies exist to capture or filter out carbon dioxide (CO₂) emissions from motor vehicles. Consequently, the only way to decrease CO₂ per mile is to reduce fuel consumption per mile -- that is, increase fuel economy. Carbon dioxide constitutes 94.9% of vehicular greenhouse gas emissions, and "there is a single pool of technologies ... that reduce fuel consumption and thereby CO₂ emissions as well." What this analysis tells me is that greenhouse gas motor vehicle emission standards inescapably and primarily regulate fuel economy. Do you agree?

The two are closely aligned but they are different. EPA must follow the language of section 202(a) of the Clean Air Act; the Supreme Court rejected the argument that EPA does not have authority to regulate CO₂ from vehicles because it would impact fuel economy. The Supreme

Court concluded that, “the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.”

The framework document for the Obama administration’s model year 2017-2025 fuel economy program, the September 2010 Interim Joint Technical Assessment Report published by the EPA, NHTSA, and the CARB, considers four fuel economy standards, ranging from 47 mpg to 62 mpg. Each is the simple reciprocal of an associated CO₂ emission reduction scenario. The 54.5 mpg standard for model year 2025, approved by the White House in August 2012, is a negotiated compromise between the 4% per year (51 mpg) and 5% per year (56 mpg) CO₂ reduction scenarios. If fuel economy standards derive mathematically from CO₂ emission reduction scenarios, and CO₂ accounts for 94.9% of all greenhouse gas emissions from motor vehicles, are not the two types of standards related?

The two are closely aligned but they are different. EPA must follow the language of section 202(a) of the Clean Air Act; the Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), rejected the argument that EPA does not have authority to regulate CO₂ from vehicles because it would impact fuel economy. The Court concluded that, “the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.”

Nearly all of CARB’s recommended technologies for reducing greenhouse gas emissions (Table 5.2-3 in CARB’s 2004 Staff Report on options for implementing AB 1493) were previously recommended in a 2002 National Research Council study on fuel economy (Tables 3-1, 3-2). CARB proposes a few additional options, but each is a fuel-saving technology, not an emissions-control technology. These facts tell me that greenhouse gas emission standards inescapably and primarily regulate fuel economy. What conclusion do you draw?

The two are closely aligned but they are different. EPA must follow the language of section 202(a) of the Clean Air Act. The Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), rejected the argument that EPA does not have authority to regulate CO₂ from vehicles because it would impact fuel economy. The Court concluded that, “the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.”

In AB 1493 itself, CARB’s greenhouse gas standards are to be “cost-effective,” defined as “Economical to an owner or operator of a vehicle, taking into account the full life-cycle costs of the vehicle.” CARB interprets this to mean that the reduction in “operating expenses” over a vehicle’s average life must exceed the expected increase in vehicle cost (Staff Report, p. 148). Virtually all such “operating expenses” are expenditures for fuel. CARB’s implementation of AB 1493 cannot be “cost effective” unless CARB substantially boosts fuel economy. Do you agree?

This question would be best addressed by CARB since it is directed at the state standard.

How does the “national” program created in the wake of this backroom deal comport with congressional intent? Under the statutory scheme Congress created, one agency – NHTSA – to regulate fuel economy under one statute – EPCA as amended by the Energy Independence and Security Act (EISA) – through one set of rules – corporate average fuel economy. Today, three agencies – NHTSA, the EPA, and CARB – make fuel economy policy under three statutes – EPCA, the

Clean Air Act, and AB 1493 – through three sets of regulations. Where does EPCA as amended authorize this triplification of fuel economy regulation?

In *Massachusetts v. EPA*, 549 U.S. 497 (2007), the Supreme Court rejected the argument that EPA does not have authority to regulate CO₂ from vehicles because it would impact fuel economy and concluded that, “the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.” The National Program approach has garnered widespread support from a broad range of stakeholders including the automobile industry, for this joint, harmonized effort.

49 U.S.C. § 32919 says: “When an average fuel economy standard prescribed under this chapter is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards.” Yet holding out the threat of California setting greenhouse gas standards that were very clearly "related to fuel economy standards" was almost certainly at the heart of what went on in that secret negotiations. Two questions: Are vehicle greenhouse gas regulations wholly unrelated to fuel economy? If not, how can we have any confidence that you won't try to sidestep clear statutory limits on your authority as administrator?

The two are closely aligned but they are different. EPA must follow the language of section 202(a) of the Clean Air Act. The Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), rejected the argument that EPA does not have authority to regulate CO₂ from vehicles because it would impact fuel economy. The Court concluded that, “the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.” As to your second question, let me assure you that I am committed to following the requirements of the law.

Rulemaking is increasingly being accomplished through the use of consent decrees that commit the EPA to taking specific regulatory actions. The consent decrees agreed to by EPA and outside groups often commit EPA to specific actions and timeframes. If EPA is going to make specific regulatory commitments to outside groups, shouldn't there be an opportunity for Congress or the public to comment on these commitments before they are made, rather than having the opportunity to comment only after legally enforceable policy commitments are made by EPA?

Response: Most of these settlements are under the Clean Air Act, which provides the public, including any affected businesses, notice and the opportunity to comment on any consent order or settlement before it is final or filed with the court. In addition, while EPA may agree in settlement to promulgate a rule or standard required by statute, the substantive level or nature of that required action is determined through the rulemaking process, which offers ample opportunity for regulated entities to provide meaningful comment on the proposed regulation itself.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

In February, EPA published the startup, shutdown, or malfunction (SSM) rule, which will force state officials in 36 states to come back to EPA for approval of provisions of their implementation plans. EPA has been crafting this policy since reaching an agreement with the Sierra Club in connection with litigation in November of 2011. How many officials from the states affected by the February SIP call did you meet with prior to announcing the Call? When did you meet with them?

First, EPA notes that its SSM policy has been publicly stated since 1982. That SSM SIP policy has been restated and refined publicly in guidance and through actions on specific SIP provisions since then, meaning EPA's approach to SIP provisions related to SSM emissions is not new to either states or sources. Over the past year, the Sierra Club's petition for rulemaking, EPA's agreement with the Sierra Club, and EPA's progress in preparing its proposed rulemaking have been covered by the press and also discussed in national meetings and telephone calls with state air agencies. Because the proposed rulemaking addresses EPA's prior actions to approve specific provisions in certain states' SIPs, the proposal is directed more to the legality of the provisions (focusing on EPA) rather than on implementation of the provisions (focusing on states).

EPA is constantly being sued for missing statutory deadlines for rulemaking and then settling the resulting litigation in a court approved settlement agreement. The deadlines in these settlements sometimes put extreme pressure on the EPA to act, and also may create hardships for regulated businesses by interfering with construction plans or requiring large investments in a short period of time. Do you believe that EPA should first consult with the adversely affected parties and other stakeholders before agreeing to such deadlines?

Response: Where EPA settles a mandatory duty lawsuit based on the Agency's failure to meet a statutory rulemaking deadline, the settlement agreement or consent decree acts to relieve pressure on EPA resulting from missed statutory deadlines by establishing extended time periods for agency action. Most of these settlements are under the Clean Air Act, which provides the public, including any affected businesses, notice and the opportunity to comment on any consent order or settlement before it is final or filed with the court. In addition, the agency does not agree to the final substantive outcome of the required action through settlement, so interested parties have an opportunity to provide input on the action itself through normal channels such as the notice and comment rulemaking process.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

Why doesn't EPA have a policy of insisting on the inclusion of relevant stakeholders into lawsuits?

Response: When the Agency is sued on the basis of a final agency action, or for an alleged failure to timely act in accordance with a statute, EPA is a defendant and it is the court that controls who may be added as a party to the lawsuit. Interested person may seek to intervene in any such lawsuit.

What will you do to ensure that States, local governments, and other stakeholders have the ability to meaningfully participate in settlement negotiations for lawsuits that involve EPA's failure to perform a non-discretionary administrative duty?

Response: I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

If confirmed, how do you plan to prevent the proliferation of wasteful lawsuits?

Response: If confirmed, I will consult with our Office of General Counsel as well as the Department of Justice about ways to reduce the number of lawsuits filed against the agency.

At the confirmation hearing, Ms. McCarthy indicated that under the Clean Air Act, the agency is required to seek public comment on settlement agreements. Does EPA also seek public comment on settlement agreements that do not pertain to the CAA? Please identify all instances where the Agency has sought public comment on settlement agreements, not associated with the CAA.

Response: My understanding is that EPA's pesticide program also provides settlement agreements through the Agency website, but I am not familiar with the details of the settlement practices of each EPA Office. I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

At the confirmation hearing, Ms. McCarthy indicated that there are additional opportunities for public interaction beyond the public comment on settlement agreements. Please identify these additional opportunities.

Response: Additional opportunities for public interaction beyond the public comment on settlement agreements include participation in any rulemakings or other activities that may result from such agreements. For example, citizen groups, industry representatives, and other interested people may participate in stakeholder meetings that occur before a rule is proposed. Once the Agency publishes a proposal, there is a comment period open to any member of the public to provide comment on the proposed rule. These comments are considered before the agency takes final action.

There are many ways in which EPA can interact with the public in carrying out our work, and if confirmed, I can examine how to improve such opportunities.

At the hearing, Ms. McCarthy was asked if EPA had ever changed the terms of a settlement agreement in direct response to public comments. Ms. McCarthy responded that she did not know. Please respond for the record whether EPA has ever changed the substance of settlement agreements in response to public comments. Please identify every instance in which EPA changed the substance of a settlement agreement based on public comment and identify the change.

Response: My staff has made me aware of some instances in which EPA has changed the substance of Clean Air Act settlement agreements in response to public comments. For example, after receiving adverse comments on a proposed settlement agreement regarding the technology and residual risk review for more than 25 source categories, EPA modified deadlines for taking proposed or final actions and clarified the scope of such actions for a number of source categories before finalizing the agreement. However, I am not aware of every instance in which EPA has made such a change.

EPA entered into a settlement agreement with WildEarth Guardians and the Sierra Club on regional haze. The states have since insisted that under the Clean Air Act, they should be the lead regulators on this matter. Did EPA consult with the affected states before the agency settled with the Sierra Club and WildEarth Guardians?

Response: Although the Clean Air Act gives States the lead in addressing regional haze, if States do not take action consistent with the Act on a timely basis, the Act obligates EPA to take action. EPA was sued to set new deadlines because States and EPA had not taken required actions. We published the proposed settlement agreement in the Federal Register and received and considered comment on it from the States and other interested members of the public before finalizing the agreement.

At the hearing, in response to questions on regional haze, Ms. McCarthy stated that, "We worked very closely with States on regional haze issues, and we worked hard to make it a State implementation plan to the extent that we can." Yet, we know that EPA has rejected several state implementation plans. What are the limitations EPA faces that would lead the agency to reject a state implementation plan? If EPA is seeking to work with the states, why are these states currently suing EPA to challenge EPA's action on regional haze?

Response: EPA can only approve State implementation plans that are consistent with the Clean Air Act and our regulations. I am committed to working with States so that more of these plans can be approved and litigation can be avoided.

BACT standards apply to individual sources on a case-by-case basis. They generally are more stringent – and by law may not be less stringent – than Clean Air Act new source performance standards (NSPS),

which the EPA establishes for categories of industrial sources. In other words, NSPS are the “floor” or minimum emission control standards for BACT determinations. Is that correct?

Yes. The Clean Air Act specifies that BACT for a source cannot be less stringent than an applicable NSPS. Thus, when EPA completes an NSPS for a source category, BACT determinations that follow for applicable sources would need to consider the levels of the pollutant standards and the supporting rationale of the NSPS.

If BACT does not require fuel-switching, we should have no reason to expect that NSPS would require fuel switching or “redefine the source” to impose identical CO₂ control requirements on coal boilers and on gas turbines. Is that correct?

EPA’s GHG Permitting Guidance (March 2011) says: “... a permitting authority retains the discretion to conduct a broader BACT analysis and to consider changes in the primary fuel in Step 1 of the analysis.” Thus, EPA never ruled out the possibility that a permitting agency could require that an applicant consider natural gas, or other cleaner fuels, when proposing a coal-fired EGU. However, it is important to note that under the proposed carbon pollution standard for new power plants, companies would not be required to build natural gas combined cycle units; they would be required to meet a standard of 1000 lbs/MWh, which can be met either through the use of natural gas or by burning coal along with carbon capture and storage. The agency is still actively considering a wide range of comments on this issue, and any final decision will reflect careful consideration of the issue.

In their guidance establishing what could be considered Best Available Control Technology (BACT) for regulating GHGs in the permitting process, EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT: Since NSPS are traditionally interpreted to set the BACT “floor” for permitting purposes, how can a NSPS that eliminates the ability to construct new coal units without the implementation of commercially infeasible carbon capture and storage (CCS) be consistent with EPA’s previous guidance?

As explained in responses to related questions, the statement that “EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT” is not entirely correct. While EPA did not propose that CCS represented BSER, EPA stated in the preamble of the proposed NSPS rule that “CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO₂ capture, compression, transportation and storage) have already been implemented at commercial scale.” [77 FR 22414]. As noted in answers to other questions, several commercial-scale coal-fired power plants with CCS are currently progressing, and EPA’s view is that coal-fired units can meet the proposed limit. The agency is still actively considering a wide range of comments on these issues, and any final decision will reflect careful consideration of these issues.

The Air Office’s PSD and Title V Permitting Guidance for Greenhouse Gases, both as proposed in November 2010² and as adopted in March 2011, similarly states that the “initial list of control options for a BACT analysis does not need to include ‘clean fuel’ options that would fundamentally redefine the source.” In other words, an applicant would not be required to “switch to a primary fuel type other than the type of fuel that an applicant proposes to use for its primary combustion process.” In addition, a Q&A document published along with March 2011 guidance asks whether “fuel switching

(coal to natural gas) should be selected as BACT for a power plant?" The document answers: "No." It goes on to state that BACT for CO2 should "consider the most energy efficient design," but "does not necessarily require a different type of fuel from the one proposed." These documents suggest that the EPA will not require fuel switching in BACT determinations. Was that a reasonable conclusion for Congress and electric utilities to draw at the time?

That is a reasonable interpretation, and EPA continues to believe that its BACT guidance is reasonable for the specific purposes for which the guidance is intended.

In most cases, the EPA is required to document a threat to public health or the environment before issuing a new regulation. But evidence abounds that the agency routinely relies upon speculative and poorly constructed computer models to justify its rulemaking. The Government Accountability Office, among others, has revealed serious shortcomings in the agency's scientific analyses. Unjustified regulations misdirect resources from real threats, and thus jeopardize public health and safety. What actions, if any, will you take to ensure that the agency applies the best science available through rulemaking?

EPA works to ensure the use of the best available science, including through compliance with its Data Quality and Peer Review Guidelines which respond fully to Federal standards established by the Office of Management and Budget. I intend to continue the agency's ongoing efforts to ensure that scientific and technical information that is intended to inform or support agency decisions continues to be based on the best available science.

The final Boiler MACT and related Non-Hazardous Secondary Material (NHSM) rule published at the beginning of this year are a significant improvement compared to where EPA started and better than the December 2011 reproposal. EPA promised in the final NHSM to amend the list of non-waste fuels to include (1) paper recycling residuals, (2) processed construction and demolition wood, and (3) railroad cross-ties. We have been hoping EPA would start this supplemental rulemaking quickly given the existing, extensive record and new information provided since the rule was promulgated showing how EPA's criteria for listing have been met. However, EPA has not announced a schedule for this critical action. Facilities need to know very soon for compliance purposes whether materials they have relied upon in the past as important energy sources will remain fuels. Uncertainty or failure by EPA to act will result in facilities abandoning the use of high energy residuals and filling up landfill space and being replaced by fossil fuels; clearly not a good environmental outcome. When do you plan to start this supplemental rulemaking?

Response: The Agency committed to issuing the Nonhazardous Secondary Materials (NHSM) categorical listing rule in a timely manner. I understand that, recently, the Agency received important new information from industry that will inform the rulemaking. If confirmed, I am committed to keeping the Committee apprised of ongoing NHSM rulemaking efforts.

In response to petitions from environmental organizations to initiate a 404(c) veto process for a potential mine site in Bristol Bay before a permit application was submitted, EPA – pointing to its authority under CWA Sec. 104 – initiated a draft watershed assessment that involved the crafting of a hypothetical mining scenario in Bristol Bay. EPA has stated that the assessment will not have any legal consequences, but also that it is intended to provide a scientific and technical foundation for decision-making. How exactly does EPA intend to utilize this study under your leadership?

Response: I understand that EPA is currently undertaking a peer reviewed study of the potential impacts of large scale mining on the Bristol Bay Watershed. If I'm confirmed, I commit to learn more about the process and the assessment and I would happy to follow up with you.

EPA has full authority under the well-established Sec. 404 process to review any future permit application submitted to make a determination as to whether or not there will be any of the unacceptable adverse effects listed in CWA Sec. 404(c) at the disposal sites being considered by the U.S. Army Corps of Engineers, including unacceptable impacts to fishery areas and wildlife. Why, then, is EPA using its limited resources to conduct a watershed assessment on a hypothetical mining scenario that even EPA's scientific review panel found did not accurately reflect the conditions of a real mine, rather than allow the companies that have invested millions of dollars to submit their proposal which EPA would then review?

Why does the draft assessment only focus on two hydrologic units in the watershed and assume that such a small area is representative of a 40,000 square mile region?

Why did EPA not note the risk assessment scenarios in their proper explanatory context, as they would have been in a typical risk assessment document?

Why did EPA fail to address mitigation and impact avoidance or minimization actions that would undoubtedly be included in any actual mine plan?

What impact do you think EPA's actions with respect to Bristol Bay will have on investment in U.S. property and natural resource development?

Has EPA considered the positive environmental justice impacts high-paying jobs and tax revenue will have on the region?

Response (to the six questions above): I understand that EPA is currently undertaking a peer reviewed study of the potential impacts of large scale mining on the Bristol Bay Watershed. I understand the need to ensure that the Agency is spending the taxpayer's money wisely. If I'm confirmed, I will review the study carefully. I understand that the Agency has already undertaken one expert peer review, and has begun a second round of review of the revised draft. I believe that strong science is crucial for all the work EPA does, and incorporating peer review helps to address such technical issues. I understand that the Agency has publicly stated that no regulatory decision would be made until the science is fully

understood, and that it is premature for speculation on economic impact.

Section 112(r)(1) of the Clean Air Act is commonly used in EPA enforcement actions as a “General Duty” provision. It requires owners and operators of stationary sources of emissions to identify and prevent accidental releases of hazardous substances. Although the section states that “it shall be the objective of the regulations and programs authorized” under 112(r) to prevent accidental releases and to minimize the consequences of any such release, EPA has yet to issue any regulations or enforcement directives identifying what is expected of these sources. In recent years, EPA has increasingly used the General Duty provision to impose substantial penalties on facilities. This situation has created uncertainty for industry, leaving questions about the consistency of how compliance is measured and when compliance has been achieved. In addition to this uncertainty, certain interest groups are now calling on EPA to use the provision to regulate chemical facility security, regardless of the fact that the subsection is clearly limited to “accidental releases.” Furthermore, in the Homeland Security Appropriations Act of 2007, Congress explicitly assigned jurisdiction over security to the Department of Homeland Security (DHS). What is your position on EPA’s role in regulating chemical facilities using the General Duty Clause? Do you believe that legislation is needed to clarify the use of the clause as well as ensure its proper application by affirming that jurisdiction of chemical facility security remains with DHS, as Congress intended? Why or why not?

Response: I understand that there are several laws, including the Emergency Planning and Community Right-to-Know Act and Clean Air Act 112(r), which require facilities to report to the community the chemicals at their site and establish and maintain a program for preventing accidental releases of those chemicals. However, I have not had direct experience implementing Section 112(r)(1). Although it is in the Clean Air Act, it is implemented by the Office of Solid Waste and Emergency Response, not the Office of Air and Radiation. I understand that EPA is working with federal agencies, including the Department of Homeland Security, to address chemical safety issues by identifying common issues related to chemical safety and leveraging federal resources to resolve them. If I’m confirmed, I’d be happy to explore these issues with your office.

EPA makes several statements and assumptions regarding CCS in the proposed standards, and proposes that new coal fired units could comply with the rule through a 30 year “averaging” option that would allow them to deploy CCS in year 11 of operation and average their emissions over a 30 year span: While conceding that CCS does not meet the requirements of BSER, EPA claims that CCS is an available compliance option. In your estimation, is CCS commercially feasible today?

In the proposed carbon pollution standards for new power plants, EPA did not declare that CCS is not BSER. The agency is still considering a wide range of comments on the proposal, including on this issue, and we will of course take these comments into consideration in taking any final action on the proposal. The EPA stated in the preamble of the proposed rule that “CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO₂ capture, compression, transportation and storage) have already been

implemented at commercial scale.” [77 FR 22414]. As explained in response to other questions, EPA’s view is that new coal-fired units can meet the proposed limit. While a number of commenters have pointed out concerns about the current availability of CCS, others have noted that a number of full scale commercial projects are currently in development. The agency is still actively considering a wide range of comments on this issue, and any final decision will reflect careful consideration of the issue.

Are there any CCS plants that are deployed and demonstrated on a large scale?

A number of full scale commercial projects are currently in development, including Southern Company’s Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO₂ and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California. In addition, for more than a decade, Dakota Gasification Company’s Great Plains Synfuels Plant in Bismarck, North Dakota, has been capturing and storing approximately 1.6 million tonnes of CO₂ per year.

EPA has stated that the proposed GHG NSPS will promote the development of CCS in the United States. How do you expect the rule to do so?

The proposed rule would promote development of CCS because it would set emission limits that, in the case of coal- or petroleum coke-fire units, would require use of CCS at a moderate level. A number of full scale commercial projects are currently in development, including Southern Company’s Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO₂ and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California.

Is there an existing and robust transportation pipeline system available to handle the CO₂ captured by CCS?

Carbon dioxide has been transported via pipelines in the U.S. for nearly 40 years. Approximately 50 million metric tons of CO₂ are transported each year through 3,600 miles of pipelines. [77 FR 22392]

Similarly, is there a legal and regulatory framework available to handle the sequestration of CO₂ captured through CCS? Is there a liability and insurance framework in place?

For over five years, EPA has worked to establish a regulatory framework under the Safe Drinking Water Act (SDWA) and Clean Air Act (CAA) to facilitate CCS deployment. Under SDWA and through the Underground Injection Control Program, EPA established minimum Federal requirements to ensure that geologic sequestration wells are appropriately constructed, tested, monitored, and closed to ensure protection of drinking water. Under the CAA and through the Greenhouse Gas Reporting Program, EPA outlined requirements for quantifying the amount of CO₂ captured and geologically sequestered. With respect to liability and insurance, the 2010 Interagency Task Force on Carbon Capture and Storage found that existing mechanisms related to long-term liability could be adequate to facilitate the initial commercial-scale CCS projects, and projects have been proceeding under existing laws.

In what year do you expect CCS to be commercially viable, given current funding?

EPA stated in the preamble of the proposed rule that “CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO₂ capture, compression, transportation and storage) have already been implemented at commercial scale.” [77 FR 22414]. As noted in response to one of your other questions, a number of full scale commercial projects are currently in development (please see response to question 76 for more information).

Carbon Neutrality / GHG:

In a reversal of precedence and established practice, EPA in the GHG Tailoring Rule, between proposed and final and without opportunity for public comment, treated biomass the same as fossil fuels rather than recognizing that biomass actually recycles carbon and does not increase carbon in the atmosphere. A partial recognition of this mistake was the 3-year deferral by the Agency of the regulation of biomass under the Tailoring Rule to review the science and policy. While an EPA convened Clean Air Act Science Advisory Board Panel submitted recommendations, these suggested remedies are complex, difficult to implement, and again unnecessary. So as to not miss the end of the deferral period in June of 2014 and inadvertently keep a flawed policy change in place, a final policy consistent with the science that encourages biomass as an energy source and accounts for the natural recycling of the biomass carbon is necessary. Can you imagine a scenario whereby EPA would not recognize the well-established science supporting the carbon neutrality of biomass combusted for energy by forest products manufacturers and others? As EPA Administrator, will you work with me and all affected industries to ensure that renewable biomass remains a carbon neutral fuel, and as such, receives favorable treatment in the permitting program?

The purpose of the 3-year deferral is to give EPA time to conduct a detailed examination of the science associated with biogenic CO₂ emissions and to consider the technical issues that the agency must resolve in order to account for biogenic CO₂ emissions in ways that are scientifically sound and also manageable in practice. In September 2011, EPA submitted its draft “Accounting Framework for Biogenic CO₂ Emissions from Stationary Sources” to the Science Advisory Board (SAB) for peer review. EPA is considering the September 2012 SAB Peer Review Report now, and will determine the most technically sound approach for treatment of biogenic CO₂ in a regulatory context as the agency reviews the report and its recommendations.

Do you or will you support a carbon tax? More specifically, what is your sentiment with respect to the Boxer-Sanders bill?

Response: The Administration has not proposed a carbon tax, nor is it planning to do so. The President has repeatedly called on Congress to act to address the growing threat posed by climate change. In the State of the Union, the President made clear that while he still expects Congress to act on this vital issue, but if Congress will not take action on this important issue he will continue to build on the progress underway by his Administration to confront this threat.

Can you comment on Australia's experience with a carbon tax?

Response: I am not familiar with the details of Australia's carbon tax.

We have all heard the claims that if the US acts then other countries will follow. Can EPA provide this committee with examples of specific countries that will follow the US lead if the US adopts more stringent regulations on existing power plants?

During my tenure at EPA, I have seen that the United States is recognized as a global leader in many aspects of environmental protection and many countries look to the United States for leadership in this area. Although I would defer to the State Department with regard to the positions and commitments of specific countries in this area, I believe that U.S. leadership in reducing carbon pollution will encourage greater action from other countries and will enhance U.S. leverage in international climate discussions.

If all the regulations enacted or being contemplated with respect to greenhouse gases are fully implemented, what the impact be on global concentrations of greenhouse gases and on global average temperature? Please cite your source.

To respond to your precise question would require more specific information about the current or potential future regulations to be considered. The common sense regulations to address greenhouse gases that EPA has undertaken under this administration will achieve significant emission reductions. The light-duty vehicle emissions and fuel economy standards that EPA and NHTSA have established for model years 2012-2025, for example, are expected to result in reductions of over 6 billion metric tons carbon dioxide equivalent over the lifetime of these vehicles. Further actions, from both the United States and all of the major emitting countries, will be necessary to achieve the reductions that science indicates are necessary to address climate change.

If the US has committed to a specific course of action through regulations, what leverage would U.S. diplomats have to craft international compromises on climate issues?

I would defer to the State Department with regard to the positions and commitments of specific countries in this area and more generally with regard to the conduct of international climate negotiations. That said, I believe U.S. leadership in reducing carbon pollution will encourage greater action from other countries and will enhance U.S. leverage in these discussions.

CBA:

In March of 2011 EPA released a report: "The Benefits and Costs of the Clean Air Act from 1990 to 2020" that estimated that the monetized benefits of CAA regulations would be 2 trillion dollars annually by 2020 with cumulative benefits reaching \$12 Trillion. Nearly all of the benefits came from avoiding 230,000 premature deaths annually in 2020 due to reductions in fine particulate emitted into the air we breathe. EPA stated that monetized benefits exceed costs of compliance by a 30 to 1 factor. What value did EPA use for a premature death avoided (PDA)? How was that value determined? Just how long was the PDA avoided? Was the same benefit used regardless of the time period of avoided mortality? Did the National Research Council suggest in a 2008 report to EPA that it

was more appropriate to use of the value of statistical life years (VSLY) saved for determining a value of a PDA? Did EPA incorporate that recommendation?

In the March 2011 study, estimated reductions in premature mortality were monetized using EPA's standard default Value of Statistical Life (VSL) methodology, which is based on 26 premature mortality valuation studies and is expressed as a statistical distribution with a central value of \$8.9 million (in year 2006 value dollars) for premature mortality risk reductions projected for the year 2020. This mortality valuation methodology was explicitly peer-reviewed by the statutorily-prescribed Advisory Council for Clean Air Compliance Analysis (Council) for use in developing the primary results of the March 2011 study. The VSL is applied to monetize the value of incremental reductions in population-wide mortality risks for each year analyzed.

EPA does not interpret the 2008 National Research Council (NRC) study you reference as expressing a preference for a value of statistical life years (VSLY) approach. To the contrary, the NRC report expresses a preference for a VSL approach in stating that "...the committee recommends the use of a constant WTP [Willingness to Pay] and corresponding VSL as the most scientifically supportable approach to monetary valuation of ozone-related mortality risk given the information available in the epidemiologic and economics literature." Consistent with that approach, the March 2011 report relied on the peer-reviewed, EPA standard VSL methodology for primary results but also estimated life-years gained and life expectancy gained using a dynamic population model, and these results were used as inputs to the economy-wide modeling conducted for the study.

The Office of Chemical Safety and Pollution Prevention has been engaged in negotiations with industry to develop an enforceable consent agreement for an environmental monitoring program of the effluent of octamethylcyclotetrasiloxane (D4). We understand the Agency has recently advised the industry stakeholders that it will submit the draft agreement to "peer consultation." We are troubled by this proposed action as it does not afford the protections of a formal peer review to interested parties. This could be a very one-sided process and give the Agency the ability to claim the need for a far more extensive and unnecessarily expensive monitoring program. Will you commit to either abandon the peer consultation proposal or elevate it to an independent formal peer review by the Agency's Science Advisory Board or an equivalently independent body?

Response: I am committed to ensuring the safe manufacture and use of chemicals in this country. I am equally committed to following the processes laid out in the agency's Peer Review Handbook on issues related to peer consultation and peer review. I can assure you and this committee that any review process for this or other chemicals will be consistent with the agency's peer review guidelines.

For chemicals management, the Agency has traditionally used an approach where the risks associated with a chemical are systematically evaluated first. If risks are identified that merit the introduction of risk management intervention, EPA separately assesses risk management instruments that would be the most appropriate. Will the Agency continue to use this tiered approach where risks are assessed

separately from consideration of the need for risk management? Some regional regulatory authorities, most notably the Europeans, are increasingly using hazard as the basis for proposing regulatory restrictions for industrial chemicals. This appears especially the case for controversial human health endpoints, such as endocrine activity, where the science is still evolving. Will EPA continue to use risk as the basis for regulating industrial chemicals?"

Response: It is my understanding that currently under TSCA, the EPA is required to use risk as a basis for risk management activities, recognizing the need to act in the absence of scientific certainty. I also support the Administration's interest in reforming this outdated law and, if confirmed, look forward to working on it with you and this committee.

The Agency proposed a coal combustion residuals (CCR) rule in 2010, and that rule has not been finalized. At the same time EPA has made a commitment to propose revised effluent guidelines for the steam electric industry by April 19 and then finalize the guidelines by May 2014. How does the Agency plan to ensure coordination between these two rules, which involve many of the same wastestreams?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

EPA is still considering two regulatory options for coal ash – the first would regulate coal ash under RCRA's Subtitle C hazardous waste program and the second would regulate coal ash as a non-hazardous waste under RCRA's Subtitle D program. Both options have their drawbacks, especially in my view the Subtitle C option, and EPA has received approximately 450,000 comments on the proposal identifying major shortcomings with both approaches. Given this, last year the Senate introduced bi-partisan legislation (S. 3512) that would establish federal non-hazardous waste standards for the management of coal ash under RCRA Subtitle D. I expect similar legislation to be introduced shortly in the House. The legislation draws from the key components of EPA's proposed Subtitle D regulatory proposal and would allow the States to take the lead in implementing enforceable permit programs for coal ash, with EPA ensuring that State programs meet the federal standards or, if not, EPA would implement and enforce the federal controls for coal ash. In light of the controversy surrounding EPA's regulatory options, would you support federal legislation along the lines of S. 3512 that would create a federal regime for the management of coal ash? What would be the key criteria that EPA would like to see in federal legislation for coal ash? Do you agree with the

views of ECOS, ASTSWMO and individual state agencies that the states are up to task of implementing federal controls for coal ash?"

Response: I am not familiar with the provisions of that particular legislative proposal; however, if confirmed, I would be happy to take a look at that and/or other bills and to provide feedback at that time.

Suzanne Rudzinski, Director of the Office of Resource Conservation and Recovery, on Oct. 11, 2012, documented in a declaration to the U.S. District Court for the District of Columbia in Appalachian Voices v. Jackson (Civ. No. 1:12-cv-00523-RBW) why the agency could not promulgate a final rule on the disposal and management of coal combustion residuals in surface impoundments and landfills in the six-month timeframe requested by plaintiffs. Ms. Rudzinski told the court that EPA could not meet that deadline because "such a schedule does not provide EPA with the time necessary to allow sound-decision making, and would result in final agency actions that, in [her] view, are neither scientifically sound nor legally defensible." EPA's semi-annual regulatory agenda provides no projected date for completion of this rulemaking. What are EPA's plans for issuing a final rule? Specifically, what are the major actions EPA plans to complete prior to issuing a final rule and the projected deadlines for completing those actions (i.e., plans for issuing a notice of data availability or any other rulemaking steps requiring public comment)? Can you assure us that EPA will not define coal ash as a hazardous waste?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

Coal Power Plant Closings:

A large number of plants are expected to retire in 2015/16 – as the economy recovers and electric demand recovers. Experts expect regional problems because there are areas not served by natural gas pipelines where needed infrastructure may not be able to be put in place in this time frame or where replacement plants cannot be permitted and built within this time frame. MISO has done an analysis that shows 9% of capacity (12.9 GW at last estimate) is closing and there is probably not sufficient gas infrastructure to serve existing demand let alone new demand. Did EPA examine natural gas availability when you issued the Utility MACT rule, CSAPR, the PM NAAQS and NSPS for GHGs?

Electric utilities, grid operators and electric regulatory bodies, like state public utility commissions, have a wide variety of options for meeting electric demand. EPA conducts detailed analysis to support its actions and projects that fuel diversity will be maintained in the

future so that the full range of electric generating resources is maintained, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis projects that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting analyses of its power sector rules.

EPA has not done a cumulative analysis of the impact of its many recent regulations affecting power plants. There has been no government analysis by any government agency of which plants are closing, where they are located and whether or not the area has natural gas infrastructure in place or can be supplied with additional supplies of natural gas in existing infrastructure. Certain sections of the country are very coal dependent while others have little coal generation. Ten states depend on coal for over 70% of generation; 11 states are 50-70% dependent. These states will experience disproportionate impacts including higher costs. Is this something EPA examined? Does this concern you?

Electric utilities, grid operators and electric regulatory bodies, like state public utility commissions, have a wide variety of options for meeting electric demand. Many existing coal plants are already very well controlled for pollution, and other coal plants have the ability to retrofit with widely available pollution control technologies. External analysts, including GAOⁱ, CRSⁱⁱ, the Bipartisan Policy Centerⁱⁱⁱ, and Analysis Group^{iv}, have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. EPA performs detailed regulatory impact analyses of its power sector rules, including estimates of potential impacts on the mix of generation resources as well as electricity prices, and these analyses are publicly available and subject to notice and comment.

Have EPA regulations played a role in the premature closing of coal-fired powerplants?

A number of factors may influence an owner/operator's business decision to retire a plant; in some instances, environmental rules may be a part of the equation. External analysts, including GAO^v, CRS^{vi}, the Bipartisan Policy Center^{vii}, and Analysis Group^{viii}, have found that decisions to

ⁱ Government Accountability Office – “EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges” <http://www.gao.gov/assets/600/592542.pdf>

ⁱⁱ Congressional Research Service – “EPA's Regulation of Coal-Fired Power: Is a “Train Wreck” Coming?” http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pdf

ⁱⁱⁱ Bipartisan Policy Center – “Environmental Regulation and Electric System Reliability” <http://bipartisanpolicy.org/library/report/environmental-regulation-and-electric-system-reliability>

^{iv} Analysis Group – “Why Coal Plants Retire” http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/2012_Tierney_WhyCoalPlantsRetire.pdf

^v Government Accountability Office – “EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges” <http://www.gao.gov/assets/600/592542.pdf>

^{vi} Congressional Research Service – “EPA's Regulation of Coal-Fired Power: Is a “Train Wreck” Coming?” http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pdf

^{vii} Bipartisan Policy Center – “Environmental Regulation and Electric System Reliability” <http://bipartisanpolicy.org/library/report/environmental-regulation-and-electric-system-reliability>

retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth.

Bloomberg Government recently put together a comparison chart of various estimates of plant closures made by government agencies and private financial firms and other experts. EPA's estimate in December 2011 of plant closures resulting from EPA's regulation at 17.5 GW. The EIA estimated 49 GW in July 2012, most of it within 5 years but put the overall range at 34 GW to 70 GW. Other private sector groups have estimated coal plant closures at 34.5 GW to 77 GW. Is it concerning to you that EPA's estimate constitutes such an outlier?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figures. External analysts, including GAO^{ix}, CRS^x, the Bipartisan Policy Center^{xi}, and Analysis Group^{xii}, have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

EPA regulations and low natural gas prices are leading many utilities to fuel switch from coal- to natural gas-fired generation. However, it is not clear yet whether there will be sufficient pipeline infrastructure or storage to accommodate the greater use of natural gas by electric utilities. And as is evidenced in your home region of New England, a region heavily reliant on natural gas for electric generation, there are issues with pipeline capacity and competing demand for gas for home heating. Electricity prices in New England were four to eight times higher than normal in February 2013 because of the lack of fuel diversity. And New England is not the only region of the country with potential reliability concerns. A January 2013 EPA Compliance Update by the Midwest Independent System Operator (MISO) states the ISO has concerns about whether there is sufficient resource adequacy in the Midwest beginning in 2016. With the significant number of coal-fired generation retiring due to EPA regulations and low natural gas prices, MISO projects there will be a potential 11.7 GW shortfall of resource adequacy in the winter of 2016 and a 3.5 GW one in the summer of 2016. MISO anticipates increased utilization of natural gas fuel generation that will result in "changes to the system's generation configuration and concerns about the ability of the current pipeline infrastructure's ability to deliver enough gas." Do you agree that EPA environmental regulations are now driving U.S. energy policy with serious implications for electric reliability and electricity prices? Is EPA working closely with the Federal Energy Regulatory Commission to ensure the reliability of the electric grid and smaller load pockets facing potential generation shortfalls? Can you please provide

^{viii} Analysis Group – "Why Coal Plants Retire"

http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/2012_Tierney_WhyCoalPlantsRetire.pdf

^{ix} Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" <http://www.gao.gov/assets/600/592542.pdf>

^x Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pdf

^{xi} Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" <http://bipartisanpolicy.org/library/report/environmental-regulation-and-electric-system-reliability>

^{xii} Analysis Group – "Why Coal Plants Retire" http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/2012_Tierney_WhyCoalPlantsRetire.pdf

the committee with specific information about inter-agency meetings on these issues?

EPA is working closely with FERC and DOE, as well as with grid planning authorities and other key stakeholders, to ensure implementation of EPA rules and requirements in a manner consistent with maintenance of electric reliability. EPA will continue to work with FERC, DOE, grid planning authorities and electric utilities to address any specific challenges that may arise. EPA, FERC and DOE meet regularly to coordinate on these issues. The three agencies participate jointly in monthly calls with key Regional Transmission Organizations, have met jointly with other key planning authorities, and participate in engagement with state regulatory authorities and other stakeholders. With regard to your question concerning impacts of environmental regulations, please see the agency's responses to the previous questions.

As you may be aware, the Federal Energy Regulatory Commission (FERC) is examining how to promote greater coordination between the electricity and natural gas industries. The Commission has held five technical conferences on this issue and plans to hold another in April. The one thing that is clear from all these conferences is that no one knows whether all the changes needed for fuel switching from coal- to natural gas-fired electric generation on this scale can be accomplished in the time needed to comply with EPA regulations. What involvement, to date, has EPA had with FERC on these technical conferences? Has the agency considered providing utilities with more time to comply with regulations (by perhaps providing larger spacing between regulations) in order to allow the infrastructure upgrades and market reforms (e.g., synchronization of scheduling between electricity and natural gas markets) needed to enable this massive amount of fuel switching?

EPA's Clean Air Act power plant rules provide flexibility to help ensure a path forward for all types of electric generators. Additionally, EPA regulations and guidance have provided tools to allow for planning flexibility in response to reliability challenges. For example, EPA has taken steps to ensure broad availability of an additional year to comply with the MATS rule where needed for technology installation, including in situations implicating reliability considerations. In addition, concurrent with the final MATS rule EPA has identified a clear pathway for up to one additional (fifth) year to come into compliance where needed to address a documented reliability issue. EPA is working closely with FERC and DOE, as well as with grid planning authorities and other key stakeholders, to ensure implementation of EPA rules and requirements in a manner consistent with maintenance of electric reliability.

During extreme weather conditions – whether cold, hot or hurricane – there is great value in a “coal pile” that can be deployed at those times. If it were only market conditions, or the current lower price of natural gas, coal plants would not close – utilities would simply run gas plants more, run coal plants less but keep them in the generation mix for future needs. Electric reliability is challenged during exactly these weather related events. Are you concerned that a major emergency back-up resource– that “coal pile” – will not be available in future weather emergencies?

EPA's Clean Air Act power plant rules provide flexibility to regulated entities to help ensure a path forward for generating units of all types. EPA analyses conducted in support of its power plant rules project that fuel diversity will be maintained in the future, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis has shown that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA also takes into account the availability of natural gas pipeline capacity to meet

the needs of natural gas generators when conducting its analyses. EPA works closely with DOE, FERC, grid planning authorities and other entities with expertise related to electric reliability to help ensure that the agency's rules are implemented in a manner consistent with maintaining electric reliability.

Can you remember any instance in which EPA has disagreed with a State's approach on an environmental issue and ultimately decided that the State was correct?

Response: I do have experience both at EPA and in my work with the States of EPA and a State working together to resolve issues in a mutually agreeable fashion. For example, EPA and the State of New Mexico initially disagreed on the regional haze implementation plan for the San Juan Generating Station. However, after working together, the parties were able to come to an agreed upon path forward. That collaboration with state and local governments is something that I would hope to bring to the job of Administrator if confirmed.

On March 29, 2013, the Department of Justice filed a cert petition asking the Supreme Court to reverse the decision by the D.C. Circuit striking down EPA's Cross State Air Pollution Rule (CSAPR). This cert petition makes certain claims about the impact of the Court's decision that appear to be inconsistent with statements that you recently made to the U.S. General Accountability Office (GAO). In a letter dated January 7, 2013, to David Trimble of the GAO, you stated as follows: Annual 2012 SO₂ emissions levels from power plants within the CSAPR region are on track to be 23% below what CSAPR would have required in 2012. Similarly, annual NO_x and ozone season NO_x emissions in the CSAPR region are projected to be 12% and 5% below what CSAPR required for 2012." Yet the cert petition to the Supreme Court asserts that "By vacating the Transport Rule [CSAPR], . . . the court of appeals' decision will directly and negatively affect the public health." How does the court of appeals' decision "directly and negatively affect the public health" if emissions from power plants are well below the levels that would have been required under CSAPR?

Response: I can't speak to matters that are currently in litigation or to specific litigation decisions made by the Department of Justice. However, the brief filed by the Department of Justice speaks for itself and I am told that it explains, with specific citation to the CSAPR rulemaking record, the ways in which the EME Homer City decision directly and negatively affects the public health by delaying needed emission reductions and hobbling EPA's efforts to address interstate air pollution problems. A single year of emissions data does not provide a complete picture and is not a substitute for having the CSAPR regulatory requirements in place to guarantee that those emission reductions endure over time. Unfortunately, in recent months, we have seen an increase in harmful emissions from some sources that were covered by CSAPR.

Do you believe that EPA and the Department of Justice have an obligation to be forthright and honest with the Supreme Court? Do you agree that, at the very least, the statements in the cert petition regarding the public health impacts of the CSAPR decision could be misleading?

Response: I, personally, believe it is extremely important to be forthright and honest in all circumstances and especially with the courts. As noted above, the brief filed by the Department of Justice speaks for itself and I am told that it explains, based on specific findings made by EPA as part of the CSAPR rulemaking, the ways in which the EME Homer City decision directly and negatively affects the public health.

In CSAPR, EPA originally proposed that Texas would not be covered under the rule because power plants in Texas did not “contribute significantly” to nonattainment problems in other states. In the final rule, however, EPA changed its mind and asserted that emissions from Texas would contribute just over one percent of the problem with projected PM_{2.5} concentrations at one air monitor in Illinois. As a result of this new projection, EPA issued a final rule that required substantial and costly emission reductions in Texas. In fact, emission reductions required in Texas amounted to more than 25 percent of the total SO₂ reductions in CSAPR. Do you believe that EPA overreached by imposing such a substantial burden on Texas in the final rule? When trying to regulate interstate transport of emissions, do you agree with the D.C. Circuit that EPA can only regulate to the extent necessary to eliminate a state’s contribution to downwind nonattainment?

EPA’s requirements of Texas in CSAPR were in fact calculated as the reductions necessary to resolve Texas’s significant contribution to nonattainment and interference with maintenance at downwind receptors projected to have difficulty attaining and maintaining the NAAQS without the rule. The D.C. Circuit Court’s ruling made no finding regarding EPA’s requirements of Texas under CSAPR. EPA is moving forward to assess options that implement the interstate transport requirements of the Clean Air Act. As part of this effort, EPA is seeking input from Texas and the other states.

Do you anticipate proposing a replacement rule for CSAPR? Will EPA ensure that states and utilities are given adequate time to comply with the rule?

EPA and the states are responsible under the Clean Air Act for addressing inter-state transport of air pollution. EPA is assessing how to move forward to address transport pollution and is taking the Court’s *EME Homer City* opinion into account. EPA has already invited the states to participate directly in the assessment of the path forward and will continue working with the states collaboratively in determining the next steps needed to address the threat of transported air pollution to public health. As these efforts continue, EPA will be mindful of the need to provide appropriate timelines for states and the regulated community.

What lessons have you learned from the CSAPR experience?

The CSAPR experience reinforces that upwind state emissions of ozone and PM precursors can be important contributors to levels of PM and ozone in downwind states. Reducing emissions of these precursors will have important public health benefits, and EPA is already working closely with states on further efforts to address interstate transport of these pollutants.

Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements? When does EPA expect to decide?

EPA is waiting to learn whether the Supreme Court will hear an appeal of the *EME Homer City* decision as that action will affect the options for regional haze and EGUs in the East. The agency will move as quickly as possible once the Court decides, and depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

EPA had determined that electric generating units in the East that were subject to the CAIR program did not have to comply with regional haze best available retrofit technology (BART) requirements because CAIR would reduce emissions more than BART. When EPA replaced CAIR without CSAPR, it revoked the determination that compliance with CAIR constituted compliance with BART, and instead determined that compliance with CSAPR constituted compliance with BART. But now CSAPR has been overturned in court. Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements on a source by source basis? When does EPA expect to decide?

EPA is waiting to learn whether the Supreme Court will hear an appeal of the *EME Homer City* decision as that action will affect the options for regional haze and EGUs in the East. The agency will move as quickly as possible once the Court decides, and depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

When will EPA produce a full analysis of the impacts of all of its power sector regulations?

Response: EPA performs detailed analysis of the impacts of our regulations as part of the regulatory impact analysis. The modeling approaches we use can take into account other rules. For example, when EPA modeled our mercury and air toxics (MATS) rule using our integrated planning model, those requirements were added on top of the existing air rules (CSAPR) which are already coded into the model. These models capture the investment decisions of plant owners as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating margins. If confirmed, I will work to ensure that future EPA rules reflect careful consideration of the overall state of the power sector, including the impacts of previously finalized rules.

Section 321(a)

In EPA's Utility MACT proposal, EPA stated that: "EGUs are the subject of several rulemaking efforts that either are or will soon be underway. . . . EPA recognizes that it is important that each and all of these efforts achieve their intended environmental objectives in a common-sense manner that allows the industry to comply with its obligations under these rules as efficiently as possible and to do so by making coordinated investment decisions and, to the greatest extent possible, by adopting integrated compliance strategies." So, EPA recognizes that it needs to approach these rulemakings, to the extent

that its legal obligations permit, in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final rules, while still achieving the fundamentally important environmental and public health benefits that the rulemakings must achieve. The upcoming rulemaking under section 111 regarding GHG emissions from EGUs may provide an opportunity to facilitate the industry's undertaking integrated compliance strategies in meeting the requirements of these rulemakings. The Agency expects to have ample latitude to set requirements and guidelines in ways that can support the states' and industry's efforts in pursuing practical, cost-effective and coordinated compliance strategies encompassing a broad suite of its pollution-control obligations. EPA will be taking public comment on such flexibilities in the context of that rulemaking. Does EPA intend to follow through on this commitment and provide a forum in which EPA notifies utilities of all of the impending power sector regulations and discusses ways for industry to comply with all of these regulations in a least cost fashion?

As stated in the cited portion of the preamble to the proposed utility MACT rule (later finalized as the Mercury and Air Toxics Standards or "MATS"), the agency's intent was to use the rulemaking process itself to address issues of flexibility that might support industry's efforts to develop integrated compliance strategies for affected sources. In developing the final MATS rule, for example, the agency received substantial comment suggesting ways in which the final rule could provide compliance flexibility and the agency adopted several of these suggestions, resulting, according to the Regulatory Impact Analysis for the final standards, in \$1.3 billion in annual cost-savings relative to the proposed standards. With regard to section 111, EPA is still in the process of reviewing comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b). The agency is not currently developing any existing source GHG regulations for power plants under section 111(d).

In section 402(p) of the Clean Water Act, Congress established a procedure that requires EPA to give Congress the opportunity to fully review and analyze EPA's rationale for expanding the federal regulation of stormwater before taking any regulatory action. For instance, the 402(p) report to Congress justifying the 1999 Phase II expansion of the stormwater regulations was submitted to Congress in 1995 – four years before the regulations were finalized. Will EPA follow that procedure for the stormwater rulemaking the Agency is currently working on? What is your anticipated schedule for delivery of the 402(p)5 report to Congress justifying any new post-construction stormwater regulations and how does that compare to your anticipated release date for the draft regulation itself for Public Comment?

Response: I am not aware of a specific timetable for delivery of a 402(p) report or with the specific requirement you cite under the Clean Water Act; however, if confirmed, I would certainly commit to ensure that the Agency meet its requirements under the law.

The recent federal District Court decision in Virginia Dept. of Transportation v. EPA (which concerned the Accotink Creek in northern Virginia) held that the Clean Water Act limits EPA's regulatory authority to "pollutants" rather than water flow and EPA chose not to appeal the case. Do you believe EPA presently has any authority to regulate the flow of water? Do you believe that EPA can

control the volume, velocity or any other characteristic of stormwater that is discharged from a point source, without directly relating those characteristics to a specific level of a specific pollutant that is in that stormwater?

Response: I understand that the federal government chose not to appeal the decision in Virginia Dept of Transportation v. EPA and EPA will respect the court's decision. EPA is working closely with the Commonwealth to assure effective protection of Virginia waters from pollutants of concern. If confirmed, I look forward to working with you on this important issue.

We understand that a draft rule intended to clarify the Clean Water Act's definition of "Waters of the United States" will soon be transmitted to OMB for review. Given how far-reaching and significant this regulation would be, will you commit to at least a 120 day notice and comment period for this rule to ensure an adequate amount of time for the public to engage in this process? Will you agree to withdraw the Guidance document currently being reviewed by OMB once a draft rule is sent to OMB?

Response: I understand that the Agency and the Army Corps of Engineers have submitted a guidance document to the Office of Management and Budget. I believe that it is important that industry, states and the regulators have certainty, with respect to the Clean Water Act. If I'm confirmed, I will certainly review this topic.

The 8th Circuit (in Iowa League of Cities v. EPA) recently joined a long line of courts that have held that EPA has no authority under the Clean Water Act to regulate the source of pollution. Congress only delegated to EPA the authority to regulate the discharge of a pollutant. This means that EPA can set permit limits for discharges but cannot specify how to meet them. Will you commit that EPA will not propose any regulation that would attempt to impose specific control requirements on land, buildings or other sources of runoff, upstream from a discharge into water?

Response: I appreciate your concern regarding this important issue. The EPA is still reviewing the Eighth Circuit's decision, but I want to assure you that if EPA proposes a new regulation, it would be consistent with the law as interpreted by the courts. If confirmed, I look forward to working with you as we implement the requirements of the CWA to protect public health and water quality.

EPA's current municipal stormwater regulations only regulate stormwater flows from municipal storm sewers into waters of the U.S. The discharge from the municipal system is a validly regulated point source, but the runoff into the municipal system is nonpoint source stormwater flow. Do you believe that EPA has Clean Water Act authority to regulate the flow of runoff into a storm sewer?

Response: I appreciate your interest in this issue. It is important to clarify that only point source discharges to waters of the U.S. require a permit under the Clean Water Act. Non-point source runoff into a storm sewer is generally not regulated by EPA. If I am confirmed, I look forward to talking with you in more detail about your concerns.

According to Justice Scalia in the Supreme Court’s Rapanos decision, the average applicant for an individual Clean Water Act permit spends 788 days and \$271,596 in completing the process, and the average applicant for a nationwide permit spends 313 days and \$28,910 -- not counting costs of mitigation or design changes. What has EPA done to reduce these regulatory costs? And what you intend to do as EPA Administrator to further lessen this onerous burden faced by regulated parties?

Response: Having come from the State and local level, I understand how important it is to be able to obtain a permit quickly and affordably, and the need for that permit to withstand legal scrutiny. I agree that the requirements of the Clean Water Act need to have additional clarity. If I’m confirmed, I will explore ways to provide additional clarity to the regulated community.

The current definition of fill material, finalized in May, 2002, unified the Corps and EPA’s prior conflicting definitions so as to be consistent with each other and the structure of the CWA. The current rule solidifies decades of regulatory practice, and includes as fill material those materials that, when placed in waters of the U.S., have the effect of raising the bottom elevation or filling the water. However, both EPA and the Corps have stated that they are now considering revising the definition of fill material. What is EPA’s rationale for revisiting the well-established division of the Sec. 402 and Sec. 404 programs?

What specific problems is EPA seeking to address by revisiting the definition of fill material, and how exactly is EPA intending to address them?

Has EPA yet considered the time and costs associated with making such a change to the two major CWA permitting schemes – Secs. 402 and 404?

Response (to the three questions above): I understand the importance of clarity, with respect to the permitting process. If I’m confirmed, I’ll work closely with the Army Corps and others to ensure that there is increased clarity in the permitting process.

E15:

In February 2013, the President of the American Automobile Association testified before Congress that the introduction of E15 to commerce was done “without adequate protections to prevent misfuelings and despite remaining questions about potential vehicle damage.” In further testimony, he suggested that testing of E15 was far too narrow in scope and that sales should be suspended until further study is done on the potential full impact of E15 on all aspects of vehicles and appropriate. Do you believe testing on E15 should have included potential impacts on engine life and fuel pumps? Do you stand by EPA’s conclusion that E15 is safe and reliable for consumers to use?

EPA issued its E15 partial waiver decisions based on an extensive review of all relevant scientific and engineering information. For model year 2001 and newer light-duty motor vehicles, across the approximately 30 studies EPA used to support its waiver decisions, which included the comprehensive work conducted by the Department of Energy (DOE), no issues regarding vehicle fuel system compatibility or engine durability arose when the fuel systems and/or engines were operated or tested on E15. Taken together, these studies represent the operation of hundreds of vehicles over millions of miles on E15 under real world and testing conditions without issue. The model year 2001 and newer light-duty motor vehicles continued to meet applicable federal emissions standards over the vehicles' full useful lives when operated and tested on E15.

Through its waiver, EPA has concluded that E15 “will not cause or contribute to the failure of engines or vehicles.” If you stand by EPA’s conclusion, would you support legislation requiring the federal government should indemnify companies that sell E15 from any future liability related to the use of E15 in motor vehicles and motor vehicle engines?

I am not aware of any current proposed legislation of this nature, but in any event, the EPA has no position with regard to such proposed legislation if it exists.

When the RFS was passed, gasoline demand was projected to increase for the foreseeable future. Now, gasoline demand is flat or declining for the foreseeable future. Even if more E15 were used in the marketplace, there would not be enough room in the fuel supply, particularly given new CAFE standards. How does EPA plan on addressing this conflict between mandated ethanol volumes and decreasing fuel demand due to the Administration’s CAFÉ standards?

Congress mandated that increasing amounts of renewable fuel be used nationwide, while providing industry with flexibility to determine the most cost-effective fuel mix needed to meet the requirements of the law. EPA is reviewing comments submitted in response to the agency’s proposed rulemaking for the 2013 RFS volume standards, and will carefully consider this input as it sets future RFS standards. Going forward, EPA will consider whether any further actions under the directives and authorities provided by Congress are appropriate to help ensure orderly implementation of the program.

Many auto companies are actually warning consumers against using E15 even in EPA-approved vehicles and AAA is warning consumers not to use it. What does EPA know that the auto companies don’t?

EPA would defer to the automakers to explain the basis of their communications. The EPA issued its E15 partial waiver decisions based on an extensive review of all relevant scientific and engineering information. For model year 2001 and newer light-duty motor vehicles, across the approximately 30 studies the EPA used to support its waiver decisions, which included the comprehensive work conducted by the Department of Energy (DOE), no issues regarding vehicle fuel system compatibility or engine durability arose when the fuel systems and/or engines were operated or tested on E15. Taken together, these studies represent the operation of hundreds of vehicles over millions of miles on E15 under real world and testing conditions without issue. The model year 2001 and newer light-duty motor vehicles continued to meet applicable federal emissions standards over the vehicles' full useful lives when operated and tested on E15.

Did EPA look at any testing data other than emissions before approving E15?

EPA issued its E15 partial waiver decisions based on an extensive review of all relevant scientific and engineering information. For model year 2001 and newer light-duty motor vehicles, across the approximately 30 studies EPA used to support its waiver decisions, which included the comprehensive work conducted by the Department of Energy (DOE), no issues regarding vehicle fuel system compatibility or engine durability arose when the fuel systems and/or engines were operated or tested on E15. Taken together, these studies represent the operation of hundreds of vehicles over millions of miles on E15 under real world and testing conditions without issue. The model year 2001 and newer light-duty motor vehicles continued to meet applicable federal emissions standards over the vehicles' full useful lives when operated and tested on E15.

Was EPA aware of ongoing CRC testing on engine durability, fuel pumps and other engine components? Why not wait until that test was complete before making a decision? Because in the aftermath it looks like the decision was, at best, premature. The CRC data shows millions of approved vehicles are in danger of engine damage.

EPA has reviewed the limited portions of the CRC test program made available to the public. Unfortunately, complete information on the testing program has not been made available to the government, and the CRC expressly denied EPA or the Department of Energy (DOE) a role in the test program. As DOE has highlighted repeatedly (see for example here: <http://energy.gov/articles/getting-it-right-accurate-testing-and-assessments-critical-deploying-next-generation-auto>), the CRC E15 test programs have a number of significant scientific shortcomings, including failure to test components or vehicles on E0 and E10 to provide information on typical failure rates for baseline fuels.

How many stations are carrying E15? How is EPA ensuring compliance with the labeling requirement? Recent reports show that as many as 1/3 of stations carrying e15 are not properly labeling it.

As of April 15, 2013, EPA has approved misfueling mitigation plans for 11 companies that are offering E15 at approximately 20 retail stations. EPA is closely monitoring results from the E15 compliance survey to ensure that stations that offer E15 are complying with applicable E15 labeling requirements. In 2012, the E15 survey checked every E15 station registered with an approved Misfueling Mitigation Plan and found 100 percent compliance with the labeling requirements. Reports suggesting that 1/3 of the stations with approved misfueling mitigation plans were found not to be in compliance with the labeling requirements, are erroneous.

At what point should we conclude the mandate is causing significant harm?

EPA is not requiring the use of E15 – this will be up to the marketplace.

What was the rate of consumer misfueling during the switch from leaded to unleaded gasoline? Why didn't EPA promulgate stricter misfueling mitigation requirements like it did during that time- or even the more stringent warning label (considering that was the only misfueling mitigation measure EPA is requiring)?

EPA does not believe there was significant misfueling as unleaded gasoline was introduced. The agency did conduct tampering and misfueling surveys throughout the 1980's and into the early

90's during the phase out of lead in gasoline. The surveys generally found a very low incidence of misfueling. Further, state inspection programs implemented in many areas of the country also implemented tampering and misfueling inspections, which acted as additional deterrents to misfueling.

What is the status of an ANSI standard for E15?

I am not aware of any ANSI standards for E15.

Why is EPA suggesting an E15 cert fuel in the Tier 3 rule, considering one of the justifications is to harmonize regulations with the State of California, which certifies to E10? Is this a way to force automakers to build cars to use fuels that may or may not be commercially available?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether we should finalize E10 for certification test fuel. If we finalize E15, the agency intends to allow use of E10 as the certification test fuel through 2019.

Given the number of issues with E15, not the least of which is liability, why does EPA think half of the fuel consumption will be E15 in 2017?

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine our analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

The majority of gas stations are single store operators, and more than 90 percent are independent from refineries. Why would these small businessmen take on potential liability to sell a fuel that can only be used in less than 5 percent of vehicle (those certified by manufacturers to use E15 or FFV) and no other type of engine?

EPA does not require that any party offer E15 for sale. EPA has not made a projection of potential E15 sales, but would note that light-duty diesel vehicles represent less than five percent of vehicle sales, yet many retail stations now offer diesel fuel in order to appeal to a wider clientele of potential customers.

Despite guidance from OMB, EPA frequently does not assess the cumulative economic impact of regulations on the regulated community. For example, although EPA touts the cumulative benefits of its Clean Air Act regulations, each regulatory proposal under the Act is only assessed for its particular costs and impacts. Will you commit to ensuring that EPA does a better job assessing the cumulative impacts of regulatory proposals, including impacts on U.S. competitiveness?

Response: EPA performs detailed analysis of the impacts of our regulations as part of the regulatory impact analysis. The modeling approaches we use can take into account other rules. For example, when EPA modeled our mercury and air toxics rule using our integrated planning model, those requirements were added on top of the existing air rules (CSAPR) which are already coded into the model. These models capture the investment decisions of plant owners as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating margins. If confirmed, I would be happy to work with EPA economists to investigate and refine economic tools that can help us better assess our regulations.

EPA is required by statute to evaluate the costs and benefits of each regulation. For cooling water intake structures Clean Water Act Sec. 316(b) regulations, EPA's own analysis states costs 20 times greater than the expected benefit. To justify the imbalance between costs and benefit the EPA provides all kinds of caveats calling the analysis incomplete and the costs overstated. The agency is required to conduct these analyses in a way that supports sound decision-making when setting standards. Such a gap between costs and benefits is troubling – especially for those in rural America and other economically disadvantaged communities who will ultimately be paying for these changes. Does this analysis reflect the state of EPA's science and if not, what steps will EPA take to redo the analysis so that it accurately reflects the cost and benefits before making any policy decision and before issuing any proposed or final regulation?

Response: As you know, I have worked hard to find practical approaches to regulation under the Clean Air Act. If confirmed, I look forward to working to ensure that rules like 316(b) are similarly sensitive to the variations across the electric utility industry and to look for flexibilities that can reduce costs while maintaining environmental protection. Similarly, I will always work to ensure that the EPA uses the best science available for regulatory analysis.

It is my understanding that endocrine screening results have been submitted to EPA on about 50 pesticide chemicals. What has been EPA's experience with the Endocrine Disruptor Screening Program (EDSP) to date? How is EPA applying a weight of evidence approach to screening level results to determine whether the chemicals need to go on to higher tiered endocrine testing?

Response: As I understand it, the agency has received data on a number of pesticides and is in the process of conducting a technical review of the data. If confirmed, I will work to ensure that the endocrine program is on sound scientific footing.

I understand EPA is conducting an evaluation of how well the EDSP Tier 1 screening methods and Battery actually performed. If certain methods are found to be flawed or aren't performing adequately, will EPA make the necessary adjustments to the methods or test Battery before requiring additional substances to undergo EDSP Tier 1 screening? What challenges does EPA see in this next phase? What lessons has EPA drawn from its implementation of the EDSP program to date?

Response: As I understand it, the EDSP screening methods are undergoing external peer review. If confirmed, I will work to ensure that the endocrine program is on sound scientific footing.

EPA's endocrine disruptor regulatory program is risk based, which allows EPA to set safe levels of exposures based on a determination of both hazard and exposure. Do you agree that a risk-based approach is more scientifically sound than a hazard based approach? Do you think this approach provides EPA adequate authority for addressing the "endocrine disruptor" issue?

Response: My understanding is that EPA's endocrine disruptor screening program is a risk based program and is statutorily based. I will work with you and the committee to ensure that the endocrine program is on sound scientific footing.

Endangerment Finding / Peer Review

In 2009, EPA determined in its Endangerment Finding that carbon dioxide and related substances pose a danger to human health and welfare. EPA made this determination without the peer review of the Scientific Advisory Board, a panel of independent scientists whose function is to ensure the scientific credibility of EPA's Clean Air Act proposals. What explains EPA decision to impose such a draconian regulation without complying with its statutory duty of scientific peer review?

EPA relied on comprehensive peer-reviewed scientific assessment reports conducted by the US Global Change Research Program, the Intergovernmental Panel on Climate Change, and the National Research Council, which are subjected to rigorous expert and in some cases government review. This approach was validated by the D.C. Circuit Court in *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012). The Court found that EPA had based its Endangerment Finding on substantial scientific evidence, noting that "the body of scientific evidence marshaled by EPA in support of the Endangerment Finding is substantial," and that EPA's reliance on these scientific assessments was proper and consistent with the methods decision-makers often use to make a science-based judgment. EPA followed all applicable agency and OMB guidelines regarding data quality and peer review in developing the Endangerment Finding. The D.C. Circuit rejected arguments that EPA was required to submit the proposed Endangerment Finding to SAB for review under the terms of 42 U.S.C. § 4365(c)(1).

EPA has for years maintained that reduction, reuse, recycling and recovery are all preferable to landfill disposal. For municipal waste that cannot be recycled (due to food contamination, or other reasons)

recovery is better than disposal. New and emerging technologies are enabling the production of a variety of clean, renewable fuels and energy from non-recycled plastic in municipal solid waste, and communities across the country are taking integrated approaches to increase recycling and maximize the energy value across the entire municipal waste streams. We hope we can count on EPA's leadership to find ways to ensure that these potentially significant domestic energy sources are not wasted in landfill, but instead treated as the renewable fuels that they are. Do you agree that energy recovery from non-recycled plastics and other waste streams is an underutilized resource? Will you consider appropriate changes to EPA's regulatory programs to do a better job of promoting energy recovery across many different industries and processes? Will you commit to work with the Committee to give energy recovery a proper place in a true "all-of-the-above" energy strategy?

Response: I am happy to work with the Committee. I agree with President Obama that we need an all of the above energy strategy to achieve energy independence in a manner that protects our resources, our health and our environment. I believe that energy recovery from waste streams is an important part of that strategy.

Energy Star

Why, after being warned of the problem by the EPA's Office of Inspector General, did you allow so many products to be labeled as ENERGY STAR appliances devices even though they weren't among the more efficient ones?

Keeping ENERGY STAR requirements up-to-date is a priority for the Agency. All appliance specifications have been recently updated, with effective dates as follows: clothes washers (January 2011), dish washers (January 2012), dehumidifiers (October 2012), room air conditioners (October 2013), water heaters (July 2013), refrigerators (in process, anticipated March 2014).

It is my understanding that EPA's Office of Enforcement and Compliance Assurance (OECA) is considering eliminating EPA's "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (Audit Policy) in an effort to deploy its enforcement resources to address more significant noncompliance issues. This would be a grave mistake as the Audit Policy, which has been in place since 1995, is one of the most successful voluntary programs that the Agency has implemented. The Audit Policy encourages regulated entities to voluntarily discover, and promptly report and correct violations of federal environmental requirements that are not otherwise required to be reported. This Policy has resulted in significant benefits both in terms of protection of human health and the environment and in the development of more comprehensive and sophisticated environmental compliance programs by industry. The Audit Policy does not require a lot of EPA resources. In fact, the Policy requires little of OECA other than a decision, or not, to investigate further the voluntary notifications of noncompliance that it receives. Do you agree that the Audit Policy is an important program? As Administrator will you commit to preserve the Audit Policy so that

the beneficial effects of this Policy continue to be achieved? OECA decisions to review or take action under the Audit Policy are discretionary and nothing requires OECA to follow-up on each and every notification it receives. What steps should OECA take to be more judicious and reduce the number notifications it reviews or follow-up actions it takes?

Response: I know that the practices of environmental management systems and internal audits of company performance have become much more widespread since EPA issued the Audit Policy over 15 years ago. Companies are increasingly aware that good environmental management is part of overall sound business management. This general corporate acceptance of auditing enables EPA to better align the Audit Policy with Agency resources and compliance priorities, and apply it where it can be most effective. If confirmed, I commit to applying compliance incentives in a manner that best advances the goals of good environmental management.

Thinking about environmental justice issues for a minute, why is EPA issuing “papers” proposing changes to policies that were initially published in the Federal Register? What has changed that justifies this significantly less-transparent approach?

Response: While I am not familiar with this specific issue, I commit that I will look into this and ensure that any work that the Agency is doing is consistent with the law and the spirit of transparency.

The “Role of Complainants and Recipients in the Title VI Complaints and Resolution Process” paper leaves an important stakeholder out of the arbitration process as EPA merely proposes negotiations between complainants and the state permitting agencies who receive federal funding. The actual permit holders are not just excluded from negotiations – there is no requirement they even be notified that a complaint has been filed. Shouldn’t EPA require both notification and inclusion of all stakeholders potentially affected by a Title VI complaint?

Response: I agree that it is vital that the Agency’s Title VI program be administrated in a thoughtful manner, consistent with the law. If I’m confirmed, I commit to receiving additional briefing on the specifics of the program.

The ability for states to develop approvable implementation plans or other submissions, such as Exceptional Events demonstrations, has been hindered by: EPA’s inability to provide timely guidance; undefined processes that do not clearly establish the criteria EPA will use to evaluate submissions; and, in some cases, the lack of a dispute resolution processes. If confirmed, what are your plans to correct these deficiencies?

EPA is committed to working collaboratively with our state, local, and tribal co-regulators to produce timely NAAQS implementation guidance. In fact, the agency is in the final stages of drafting Interim Exceptional Events Implementation Guidance, which clarifies and provides

examples of information that air agencies can include in their exceptional event demonstration submittals and identifies mechanisms that air agencies can use to resolve disagreements regarding exceptional event non-concurrence on submittal packages. EPA has had extensive stakeholder involvement during the development of this guidance, and the agency would expect that the final product will address some of your specific concerns.

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Under your direction, would EPA seek to improve the pesticide consultation process with the Services (Fish and Wildlife and National Marine Fisheries) mandated under section 7 of the Endangered Species Act? In order to improve this process, how would you guide the agency to ensure actions are taken to be consistent with the statutory mandate to use the best available information in regulatory decisions regarding pesticide reviews and registrations?

Response: I am committed to working with the U.S. Fish & Wildlife Service and the National Marine Fisheries Service to ensure that the agency fulfills its responsibilities to protect endangered species, including in the decisions made under FIFRA. To achieve this result, I commit that, if confirmed, I will emphasize the importance of using the best available scientific information in decision-making, and conducting regulatory activities in a transparent manner that provides ample opportunities for public participation.

What are the costs (in dollars and time) to EPA headquarters and regional offices related to the implementation and enforcement of the Pesticide General Permit (PGP) under the National Pollutant Discharge Elimination System (NPDES)? In a time of limited resources, how would you seek to manage these requirements while being judicious with available resources?

Response: If I'm confirmed, I'll ensure that the Agency take the least burdensome approach that is consistent with recent court decisions on this topic. If I'm confirmed, I will also work with you, the States and the Agricultural community on this important issue.

What do you see as the appropriate balance between a science-based risk assessment and precaution in making decisions about pesticide approvals under FIFRA? Explain how you would defend EPA's support and implementation of risk assessments against international regulatory authorities who favor a hazard-only based precautionary principle (e.g. the European Union)? What are your views on how best to consider impacts to international trade when make regulatory decisions?

Response: I am committed to protecting the environment as mandated by Congress. FIFRA requires the agency to balance the risks and benefits of pesticides based on the best science available. If I am confirmed I will continue to support stakeholder involvement in strong science-based risk assessments and an open and transparent process. I will continue to collaborate with our global regulatory partners, such as the OECD and the European Food Safety Authority. I look forward to sharing the results of our assessments with our international partners.

Will you support an EPA response to argue against the European Union's prohibition on 350. neonicotinoid insecticides?

Response: I am committed to protecting the environment as mandated by Congress. FIFRA requires the agency to balance the risks and benefits of pesticides based on the best science available. If I am confirmed I will continue to support stakeholder involvement in strong science-based risk assessments and an open and transparent process. I will continue to collaborate with our global regulatory partners, such as the OECD and the European Food Safety Authority. I look forward to sharing the results of our assessments with our international partners.

The government spends millions of dollars on water monitoring that is not used by the EPA Office of Pesticide Programs during the risk assessment process for the registration of pesticides. In general, EPA not using this real-world monitoring data leads to the Agency relying on modeling that over-estimates the potential human exposure to pesticides from drinking water. Being protective is good, but being over-precautionary can have the unintended consequence of eliminating safe uses of pesticide thus driving up the cost of production and limiting the pest control options for farmers and other users. What would you do to ensure that EPA risk assessments as accurate as possible and based on the best available information, while balancing the protection of human health with the needs of agriculture and food/fiber production?

Response: I am committed to applying the best available science – using both monitoring and modeling, as appropriate – to protect human health and the environment.

Does it make sense to regulate pesticides in water runoff as a Clean Water Act program when FIFRA is the congressional statement on the extent of pesticide regulations? Why not consider that pesticides, used in compliance with FIFRA, are not pollutants under the CWA?

Response: I am not familiar enough with the issues you have raised in these questions to provide a detailed response. If confirmed, the Agency and I will work with you and other members of the Committee on this important issue.

Will EPA commit to aligning its FOIA redaction practices with DOJ guidelines?

Response: I agree with you and with Acting Administrator Perciasepe that EPA must strive towards excellence with respect to our transparency policies. If I'm confirmed, I commit to working with you, and others to ensure that our policies are strong, and consistent with the law and appropriate guidelines.

What assurances can you give us that your agency will not continue to stand in the way of the new energy related jobs and the creation of more domestic energy here at home?

Response: I agree with President Obama that we need an all of the above energy strategy to utilize our domestic energy sources to achieve energy independence in a manner that protects our resources, our health and our environment.

What is the communication between stationary and mobile source emissions staff? How do you reconcile requirements to produce new fuels (such as the proposed Tier 3 gasoline sulfur reduction) with requirements to reduce emissions at refineries? Are these contradictory or do you believe that both can be done? For example, don't gasoline sulfur reduction processes increase refinery greenhouse gases, Nitrogen Oxides and Particulate Matter emissions?

Stationary and mobile source emissions staff coordinate closely with regard to interactions between regulatory actions in their respective spheres. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Joint stationary and mobile source modeling indicates that, in the absence of additional controls such as the Tier 3 standards, many areas would continue to have air pollution levels that exceed the existing health-based National Ambient Air Quality Standard (NAAQS) in the future. The proposed Tier 3 rule includes a detailed consideration of potential impacts on refinery emissions. For example, the relatively small projected increase from CO2 emissions from refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

President Obama stated that if Congress doesn't adopt climate change legislation he finds acceptable then executive actions will be taken to address climate change. What regulatory options are under

consideration by EPA to fulfill this promise, given that the President identified actions that would be taken “now”?

EPA currently is focused on reviewing more than 2 million comments received on its proposed carbon pollution standards for new power plants. In addition, the model year 2014-2018 heavy-duty GHG and fuel efficiency final rulemaking discussed a potential future phase of standards for model years beyond 2018. The agency has begun some initial discussions with stakeholders regarding a potential second phase of greenhouse gas standards for heavy duty vehicles that would extend beyond the current model year 2014-2018 standards as contemplated in the initial rulemaking. Further, EPA also oversees a number of non-regulatory programs, such as ENERGY STAR and others, which have resulted in the achievement of substantial GHG reductions.

A cursory look at the some of the largest rules that you have issued or proposed in your tenure at EPA suggests that your office has imposed between \$300 to \$400 billion dollars per year in higher costs on American businesses and consumers. Could you provide this Committee with an estimate of the total annual costs of all the rules you have proposed and finalized since becoming Assistant Administrator for Air and Radiation? How do you think these costs impact the ability of American firms to compete internationally? How do you think these costs impact the price of goods for people who are struggling to get by?

The Office of Management and Budget (OMB) issues a Report to Congress each year which compiles estimates of the benefits and costs of federal regulation.^{xiii} For each year since 2009, these OMB Reports to Congress indicate the quantified benefits of air rules issued in that year significantly exceeded the costs of those rules. In addition, in a March 2011 report that studied the 1990 Clean Air Act amendments and the effects of associated programs on the economy, public health and the environment between 1990 and 2020, EPA estimated that the benefits of these clean air programs will reach approximately \$2 trillion in 2020. By comparison, the cost of these actions was estimated to total \$85 billion, resulting in a benefit to cost ratio of approximately 30 to one. An important implication of these findings is that prices of some goods and services may be affected by investments to reduce pollution, but the value to all Americans of cleaner air vastly exceeds those costs. These benefits include reductions in the number of work days lost to air pollution-related health effects, and the resulting improvements in the productivity of American workers enhance the global competitiveness of American workers and the firms that employ them. Cleaner air also reduces medical costs incurred for air pollution-related health effects, resulting in direct savings to American households. In fact, the March 2011 report included economy-wide modeling which demonstrated that just these two beneficial effects alone more than offset the economy-wide effects of all compliance expenditures, with the result that economic growth rates were faster—and the economic welfare of American households was higher—throughout the study period with these clean air programs than without them

^{xiii} Latest draft report:

http://www.whitehouse.gov/sites/default/files/omb/inforeg/2013_cb/draft_2013_cost_benefit_report.pdf

How many of EPA's significant rules in the last four years have had to be reconsidered and revised after promulgation of the final rule?

Response: I am aware of some instances in the last four years in which EPA has reconsidered and revised a Clean Air Act rule after promulgation of the final rule. For example, in March of this year EPA finalized updates to certain emission limits for new power plants under the Mercury and Air Toxics Standards (MATS) after reconsideration of the final MATS rulemaking that was signed in December 2011. However, I am not aware of every instance in which EPA has taken such an action. If confirmed, I can examine this issue more thoroughly.

The office of the Scientific Advisory Board (SAB) is located inside the Administrator's office and my understanding is that the Administrator actually oversees and approves the selection of SAB and CASAC officials. Is this correct? Do you see an inherent conflict of interest in having EPA select and approve its own peer review committees? Isn't it possible that the selection is likely to reflect people who have general views that are congenial to the way EPA approaches the science? Wouldn't it be better to have officials outside EPA select peer review panels for significant rules, such as NAAQS?

Congress in the Environmental Research and Development Demonstration Authorization Act required that the Administrator establish the Board. As a federal advisory committee, the SAB is subject to the requirements set out in the Federal Advisory Committee Act (FACA), 5 USC App. 2. FACA requires that, consistent with the management of all committees subject to FACA, EPA must make "appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment." 5 USC App. 2 § 5(b)(3). The General Services Administration Federal Advisory Committee Management Rule, which governs federal advisory committees government-wide, requires the head of an agency that establishes one or more federal advisory committees to develop procedures to assure that advisory committees are not inappropriately influenced. 41 CFR § 1-2-3.105(g). The EPA's procedures are set out in its Federal Advisory Committee Handbook.

If confirmed, do you plan on continuing with EPA's Design for the Environment Safer Product Labeling Program? In what ways do you believe this has been a valuable program for the manufacturing community?

The DfE process for certification under the Safer Product Labeling Program is often criticized by many as costly, cumbersome and extremely slow. What would you do as EPA Administrator to make the process more efficient and cost-effective?

The DfE Safer Product Labeling Program requires review and approval of a product's composition by a third party. It is my understanding that DfE contracts with two companies to conduct these reviews. Is there a process to re-qualify these organizations? Doesn't the current format of exclusive reviews

by just two companies unfairly exclude other prospective reviewers? What, if anything, would you do to address this apparent monopoly that has been created by the EPA?

Last year, EPA's DfE program published a list of "safer chemicals" on its website as part of its Safer Product Labeling Program. What types of review has the Agency undertaken to classify these chemicals as "safer"? What criteria are used in these reviews? Is there opportunity for public review and comment on the list prior to its publication? Are chemicals not listed as "safer" unsafe for use as intended?

What challenges is the DfE Safer Product Labeling Program facing?

Response to all DfE questions: I strongly support the EPA's efforts to encourage the design and use of safer chemicals and this includes the Design for the Environment (DfE) program, a voluntary partnership program designed to help consumers and purchasers find safer products. If confirmed, I will be happy to work with you and committee on this program.

GHG

How do U.S. greenhouse gas emissions compare to other countries on an apples-to-apples basis, such as the ratio of emissions to GDP? What is an acceptable amount of greenhouse gas emissions annually for the United States?

The U.S. and other countries report total greenhouse gas emissions annually the United Nations Framework Convention on Climate Change using common methodologies^{xiv}. In Copenhagen in 2009, the U.S. committed to reducing U.S. greenhouse gas emissions in the range of 17 percent by 2020 from 2005 levels.

You previously co-authored a paper which stated that "the location of CO₂ emission reductions is irrelevant in reducing global emissions of this pollutant". Do you still agree with this assessment? If so, where do you think the most cost-effective emission reductions can be made in the world?

CO₂ and other greenhouse gases, once emitted, can remain in the atmosphere for decades to centuries, meaning that their concentrations become well-mixed throughout the global atmosphere regardless of emissions origin, and their effects on climate are long lasting. This means that the impact of GHG emissions reductions on GHG concentrations is not dependent on the location of the emissions reductions. Cost-effective emissions reductions opportunities exist throughout the world. For example, the EPA report Global Mitigation of Non-CO₂ Greenhouse Gases (EPA 430-R-06-005, 2006) finds that major emitting regions of the world, including China, the United States, the EU, India, and Brazil offer large potential mitigation opportunities from the energy, waste, and agriculture sectors. Energy efficiency improvements, for example in

^{xiv} U.S. Greenhouse Gas Emissions and Sinks Inventory

<http://www.epa.gov/climatechange/ghgemissions/usinventoryreport.html>

buildings and the transportation sector, also have the potential to yield substantial cost-effective emission reductions in major emitting countries.

The two states where you worked and developed environmental regulations for the electric power sector have the most expensive power in the Nation. I understand that during your tenure in these states that you pursued the adoption of the first ever plant-by-plant CO2 limits and the first ever CO2 cap-and-trade program. Do you think these policies contributed to the very high cost of power in these States? Can you please outline the specific environmental and health benefits realized in these States that have resulted solely from reducing CO2 emissions as a result of these programs? As EPA Administrator do you intend to pursue similar programs on a national scale?

Although I am proud of the work that I did on climate policies at the state level, I have now been with EPA for nearly four years and at this point am best positioned to discuss my work at the federal level. With regard to the power sector, last year EPA proposed carbon pollution standards for new power plants. The Agency currently is working to review the nearly 2 million comments received on that proposal.

After addressing greenhouse gas emissions in the motor vehicle and utility sector, do you have a plan for addressing GHG emissions in the rest of the economy? You have said EPA plans to focus on the biggest emitters first. Have you prioritized which industries you intend to address after motor vehicles and the power sector?

The agency is currently focused on reviewing the more than 2 million comments received on its proposed carbon standards for new power plants. Although EPA is evaluating GHG emissions information from a limited number of source categories, the agency has not determined that it is appropriate to regulate GHG emissions from other industrial sectors with the exception of the Agency previous acknowledgment that it is appropriate to issue regulations for refinery greenhouse gas emissions. But as stated in the answer to a related question, the agency has no current plan for issuing refinery greenhouse gas regulations. The agency has also previously said that it had insufficient data to regulate Portland cement facilities, and it does not have a timetable or plan for issuing GHG regulations of this sector.

EPA has been petitioned to regulate GHG emissions from animal feeding operations. Can you assure us that EPA won't regulate GHG emissions from any agricultural facilities during the second term?

Currently EPA has no plans with respect to regulating greenhouse gas emissions from animal feeding operations or any other agricultural facility.

EPA has been petitioned to regulate GHG emissions from coal mines. What are your plans with respect to such a petition?

On April 5, EPA informed the US District Court for the District of Columbia that it would be acting on a petition to regulate greenhouse gases from coal mines and in that motion, EPA stated that it plans to deny the Plaintiffs' petition for rulemaking.

EPA has been petitioned to establish National Ambient Air Quality Standards (NAAQS) for GHGs. What are your plans with respect to such a petition? Can you assure us EPA will not establish a NAAQS for GHGs?

Although EPA has not taken any final action on the petition, I do not believe that setting a national ambient air quality standard for greenhouse gases would be advisable.

Has EPA done any analysis of the value of diverse energy sources as a basis for energy independence?

Response: Not to my knowledge, though it is clear that the United States is fortunate to have a broad range of domestic energy sources, which includes – among others - coal, oil, natural gas, wind, solar, biofuels and nuclear.

Why hasn't EPA studied the cumulative impact of all its recent rulemakings which are causing the retirement of coal fired energy sources?

EPA has been monitoring the changes taking place in the electric utility industry, including the significant decline in natural gas prices, rising coal prices, and reduced demand for electricity. This, when combined with the fact that a majority of coal plants have been in service 40 years or longer and many of these older plants are significantly less efficient (resulting in lower utilization rates), has led to electric utility owners making decisions to retire some of these plants. Many analysts believe that these market changes in gas prices and other factors have the largest impact on retirements in this sector.

The modeling approaches EPA uses can take into account both these market shifts and recent rulemakings. For example, when EPA modeled our mercury and air toxics rule using our integrated planning model, those requirements were added on top of the existing air rules (CSAPR) which are already coded into the model. These models capture the investment decisions of plant owners (including retirement decisions) as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating capacity.

EPA's own data in relation to various carbon reduction plans continuously indicates reducing GHG emissions domestically will have no impact on worldwide emissions. In fact, US emissions are now below 2005 levels and have been flat or declining for nearly 12 years now. This has all occurred without cap-and-trade and, until the last few years, any other GHG regulations. In light of these facts, why do you feel the Agency still needs to move forward with its GHG regulations under the Clean Air Act?

The Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), held that greenhouse gases "fit well within the CAA's [Clean Air Act's] capacious definition of air pollutant." As a result of this decision, EPA has certain legal obligations to address greenhouse gases under the Act. Further, although U.S. greenhouse gas emissions currently are below 2005 levels, the science indicates that the U.S. and other major emitting countries must achieve much more substantial reductions in emissions to mitigate harmful climate change. As I stated in my testimony, I strongly believe that we can and must take common sense steps – such as the light- and heavy-duty vehicle emission standards issued under this Administration – that can reduce emissions while maintaining economic growth and prosperity.

In addressing the need for unilateral, domestic GHG reductions, regardless of what the rest of the world does, the Administration has historically said that we need to be “leaders” in this arena to encourage other nations to follow. The U.S. has had some sort of GHG regulation in place since 2007, ranging from the GHG requirements in the RFS, to EPA’s GHG regulations for stationary sources under the Clean Air Act, to two stages of CAFÉ and GHG tailpipe standards. How has leading through such actions to control GHGs caused China, India or other developing countries to “follow our lead” in reducing GHG emissions?

My understanding is that a number of major developing countries have taken significant actions to reduce greenhouse gas emissions in recent years. Although I don’t have sufficient information to respond to your question as to the relationship between those actions and specific actions taken by the United States, I believe U.S. leadership in reducing carbon pollution does help to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

The EPA’s greenhouse gas regulations, along with a host of other onerous regulations, are unnecessarily driving out conventional fuels as part of America’s energy mix. The consequences are higher energy prices for families and a contraction of our nation’s economic growth for no noticeable impact on the earth’s temperature as major developing countries like India and China repeatedly have said they would not cut economic growth to curb GHG emissions. Do you agree with former EPA administrator Lisa Jackson that unilateral actions on greenhouse gas emissions will not significantly impact global emissions and thus have a negligible effect on climate change?

In order to achieve the reductions in greenhouse gas emissions that science indicates are necessary to address the most severe impacts of climate change, all major emitting countries will need to take action. As I indicated in my testimony before the Committee, I believe the United States can achieve meaningful reductions in greenhouse gas emissions through common sense steps, such as the light duty vehicle emission and fuel economy standards established by this Administration, that are fully consistent with domestic economic growth. I also believe U.S. leadership in reducing carbon pollution helps to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

Under EPA’s Mandatory Reporting Rule for GHG Emissions, EPA has developed a timeframe for categories of GHG emitters to report GHG emissions data. Some companies are currently working on submitting 2012 GHG emission data to EPA and others are on a deferred schedule. EPA issued a memorandum dated December 17, 2012 (attached) which concluded that because some of the data required to be reported may already be in the public arena and therefore EPA would not accord it Confidential Business Information (CBI) protection. As you might expect, some view this conclusion as premature, and one that should be made at on a case by case basis during the data collection period. In particular, certain industries for which GHG data reporting is currently deferred are very concerned that sensitive business information and trade secrets will not be adequately protected by EPA once their data must be reported. Do you agree that certain sensitive information and trade secrets reported under the greenhouse gas reporting rule should be treated as CBI and protected? Will EPA reconsider the approach announced in its December 17, 2012 memorandum? How does EPA intend to use all of the GHG data being collected under the rule?

Data submitted under the GHG Reporting Program (GHGRP) that has been determined to be confidential business information should be protected under the provisions of 40 CFR part 2, Subpart B. In response to comments raised by stakeholders, EPA deferred reporting of certain

data elements for 3-5 years in order to provide time for the agency to evaluate confidentiality concerns (76 FR 53057, August 2011). When EPA deferred reporting for those data elements, the agency said it would conduct a sensitivity analysis of the data and the 2012 memo sets forth the results of our analysis for the data elements deferred until 2013. EPA has not received any specific stakeholder feedback or additional information that would warrant reconsideration of that analysis. EPA plans to propose a rulemaking for notice and comment related to the inputs whose reporting deadline was deferred until 2015. The GHGRP was mandated by Congress in the FY2008 Consolidated Appropriations Act and the data will inform policy decisions.

Health Benefits

What health benefits are projected to occur as a result of an existing source NSPS - that is, benefits other than the co-control of criteria pollutants or NESHAPS?

At this time, EPA is working to finalize the proposed NSPS for new power plants. The agency is not currently developing any existing source GHG regulations for power plants. As a result, we have performed no analysis that would identify specific health benefits from establishing an existing source program.

Why does EPA claim that its green house gas regulations will have health benefits at levels far below the current PM NAAQS, yet has only set the new PM NAAQS at much higher level? Shouldn't EPA be consistent in justifying regulations on the basis of PM health benefits and where its best scientific judgment sets the health protective PM NAAQS?

EPA's approach to estimating the benefits of reducing fine particulate matter pollution is consistent with the best available science and advice from two Congressionally-created independent review boards, the Clean Air Scientific Advisory Committee and the Advisory Council on Clean Air Compliance Analysis. There are health benefits attributable to reducing particulate matter pollution below the NAAQS and the agency does take those benefits into account. There is no scientific basis for ignoring those benefits. While the NAAQS is set at a level adequate to provide protection of public health – and should be neither more nor less stringent than necessary to do so – it is not set at a zero risk level.

Has EPA done any studies on the health impacts of job losses?

Response: I'm concerned about any American involuntarily displaced from a job, for whatever reason, and the impacts that can have on a family. However, I also understand that the peer-reviewed literature shows the effect of environmental regulation on jobs is far smaller than the exaggerated claims we often hear. The most convincing research out there shows that air pollution is a real threat to Americans' health and that claims of "job killing" regulations aren't supported by the evidence.

EPA performs detailed regulatory impact analyses (RIA) for each major rule it issues, including cost-benefit analysis, various types of economic impacts analysis, and analysis of any significant small business impacts. Since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine RIAs conducted for each major rule.

How many human health impacts are avoided if the proposed CWA 316(b) standards are promulgated?

Response: It is my understanding that Section 316(b) of the Clean Water Act requirements primarily relate to aquatic life; however, if confirmed, I will work to ensure that this and all Agency rules meet the appropriate scientific and legal standards with regard to all types of benefits.

In 1997, EPA changed the way that it conducts Regulatory Impact Analyses (RIA) to justify the costs of many of its regulations. Specifically, EPA now regularly addresses the criteria pollutant, PM2.5, which is already regulated under its own National Ambient Air Quality Standard (NAAQS), in the benefit cost analysis (BCA) for other pollutant regulations, particularly air toxics. Where the Agency finds that PM2.5 emissions reductions show benefits that are the same or greater than that for the pollutant being regulated (a “co-benefit”), the agency has based the rule at least in part on that result. EPA’s Mercury and Air Toxics rule for power plants is an example of this approach, which presents at a minimum some practical and scientific questions of validity. Depending on the degree to which EPA relies on co-benefits, EPA could be over-regulating the pollutant(s) that is the focus of an RIA. Since PM2.5 is regulated separately from other pollutants, doesn’t this approach really mean that EPA is “double counting” these PM2.5 reductions across other regulations? As Administrator, what steps would you take to ensure that the co-benefits of regulation do not become a regular basis for the calculated benefit of any particular regulatory proposal?

The purpose of the Mercury and Air Toxics Standards is to reduce mercury and other air toxics, following the approach set out in the Clean Air Act. While the EPA does not set out to regulate PM in toxics rules such as MATS, such rule achieve these PM reductions as an additional benefit at no additional cost. EPA accounts for the PM benefits in our cost-benefits analysis, because they are real, they are significant, and best practices for economic analysis require that the agency consider all benefits. The PM2.5 benefits the EPA estimates for new rules such as CSAPR and MATS are not “double-counting.” Those benefits are above and beyond those the agency previously estimated for other rules establishing controls on pollution that are already “on the books,” and are appropriate to include in the benefit-cost analysis for a regulation, regardless of whether those PM2.5 benefits are the direct target of a regulation or a co-benefit.

EPA rationalizes many of the very costly regulations it has proposed by citing theoretical PM related health benefit estimates that are based on data collected over 30 years ago. In fact, the key Harvard Six Cities and American Cancer Society data are based on surveys that are over 30 years old. Are you aware that in 2004 the NAS recommended that EPA not rely on these benefit studies because the individual data have not been updated? Why does the EPA continue to rely on studies that the NAS has stated should have “little use for decision making?” Is EPA misleading the public in citing these implausibly high benefit estimates when the NAS has clearly told the Agency not to rely on these

studies? Is EPA's claim of achieving benefits equivalent to curing cancer based on these same flawed studies that rely on outdated information? Will you promise not to rely on studies using the American Cancer Society or Harvard Six City databases until the data are updated as recommended by the National Academy of Sciences?

The quotation in your question is taken out of context. The NAS commented that the EPA should not rely on the Harvard Six Cities cohort and American Cancer Society cohort alone to the exclusion of a "new generation of cohort studies." In formulating the decisions on the PM NAAQS, the EPA considered all of the available scientific evidence, including studies of new cohorts. In addition, two separate panels of EPA's independent Science Advisory Board (SAB) recently recommended that the EPA use these two cohorts to quantify PM_{2.5}-related mortality risks and benefits (i.e., CASAC (2009, 2010) and Council (2010)). Despite some inherent limitations, these cohorts continue to have several advantages over other currently available cohorts, including age and gender representativeness, geographic representativeness, study size, consideration of confounders, and length of follow-up. EPA's approach is consistent with the advice from NAS and SAB.

On one of his first days in office, the President signed a memorandum entitled "Transparency and Open Government" in which he committed to create "an unprecedented level" of openness and transparency. The President correctly stated "transparency promotes accountability". Given the President's commitment, will you promise today to release to the American public all of the underlying research data supporting the PM and ozone benefit studies that your office has used to support such costly regulations? Given the hundreds of billions of dollars in real costs that EPA estimates will result from these regulations, doesn't the public have a right to have the data in order to assess its validity?

EPA is committed to transparency with regard to the scientific bases of agency decision making. In setting the National Ambient Air Quality Standards (NAAQS) and in assessing health benefits anticipated from air pollution regulations, EPA relies on the scientific studies that are published in the peer-reviewed literature. EPA provides the information used in regulatory decisions, including the epidemiological studies, in the publicly available docket accompanying each rulemaking. It is important to understand that the underlying data you are requesting for each epidemiological study consist of three distinct datasets, which the researchers link together in order to estimate the relative risks of exposure to air pollution: (1) air quality data; (2) health event data, which in these studies are data from the National Death Index; and (3) individual health data that are gathered through questionnaires completed for each study participant in the cohort. The questionnaires for these studies requested very detailed personal information, including questions on residential location, age, race, educational attainment, body mass index, alcohol consumption, smoking history, occupational exposure to pollution, and medical history. The complete, linked set of data underlying these studies is held by the scientific researchers that conducted the relevant research, not EPA. The availability of some of these datasets is subject to certain protections against disclosure of medical or similar information that could be used to identify a particular person in a research study.

Does EPA's benefit estimates for the utility MACT rule, which you estimate will cost up to \$10 billion, rely on the same two studies (Pope 2002 and Laden 2006) and the same secret databases (American Cancer Society and Harvard Six City data) that we have requested and EPA has failed to release?

The PM2.5 benefits analysis for the Mercury and Air Toxics Standards relied upon earlier studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006). EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively.

Did the 2008 proposed ozone reconsideration, which you estimated could cost \$90 billion, also rely on the same two studies (Pope 2002 and Laden 2006) and the same two secret data bases (American Cancer Society and Harvard Six City data) to estimate benefits?

The PM2.5 benefits analysis for the 2008 Ozone NAAQS relied upon earlier studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006). EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively.

Does the just released Tier III rule also rely on the same two studies (Pope 2002 and Laden 2006) and the same two secret data bases (American Cancer Society and Harvard Six City data) to estimate benefits?

The PM2.5 benefits analysis for the Tier 3 proposed rule relied upon earlier studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006). EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively, and will use these in future EPA analyses such as that supporting the Tier 3 final rule.

Doesn't your reticence to release the data suggest that the Agency is fearful the data will not hold up to public scrutiny and that there really is no support for the hundreds of billions of dollars in costs that you have imposed on the American public?

The studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006) have been extensively peer-reviewed. Studies of these cohorts were subject to a full external re-analysis by the Health Effects Institute in 2000. The results of this peer-reviewed reanalysis confirmed the findings in the original studies, concluding that "[o]verall, the reanalyses assured the quality of the original data, replicated the original results, and tested those results against alternative risk models and analytic approaches without substantively altering the original findings of an association between indicators of particulate matter air pollution and mortality."

Given that you are relying on 30-year old data for your health benefit estimates, can you realistically argue that your benefit estimates are in any way as certain as your cost estimates that are based on current market prices for equipment and labor?

EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively).

If HHS can code medical records to protect confidentiality and other agencies can code research data, why can't EPA do the same for data that are now over 30 years old?

EPA provided all of the data received from the researchers. These underlying data consist of three distinct datasets, which the researchers link together in order to estimate the relative risks of exposure to air pollution. Due to this linkage, at minimum there are serious questions as to whether it would be possible to fully protect the confidential medical information by coding the data.

What efforts have you taken to investigate the potential of employing these techniques?

Prior to disseminating the death data provided by Harvard University, EPA coordinated with the Centers for Disease Control and Prevention to ensure that the data did not identify the particular establishment or individual supplying the information.

As part of its proposed air emission standards for hydraulically fractured oil and gas wells, EPA declined to directly regulate emissions of methane but instead mandated "green completions" of wells to control volatile organic compound emissions. It appears -- based on your own testimony stating that this rule could end up "reducing up to 290,000 tons of harmful volatile organic compound emissions and a side-benefit of reducing methane emissions equivalent to 33 million metric tons of carbon dioxide" - that EPA's decision to mandate "green completions" was in effect an effort to control methane emissions. Do you agree with this assertion? Is it typical for an EPA rules stated benefit to be vastly dwarfed by a "side-benefit?"

The oil and gas standards to which your question refers regulate emissions of volatile organic compounds (VOCs) from more than 11,000 new hydraulically fractured gas wells each year – achieving a 95 percent reduction in such emissions. These reductions are achieved through the use of a proven process – known as reduced emissions completions or "green completions" – to capture natural gas that currently escapes to the air. This process has the co-benefit of substantially reducing methane emissions, as well as reducing waste of natural gas – yielding substantial cost savings. Although the rule does not target methane emissions, it is appropriate and beneficial to account for this co-benefit in analyzing and describing the rule.

Are you familiar with and confident in the data EPA used to justify the "green completion" mandate?

EPA based all provisions of the Oil and Natural Gas NSPS on the best available data sources and on proven technology that will result in net cost savings to operators through recovery of natural gas otherwise lost during well completions. A variety of data sources informed development of the rule, including data from the U.S. greenhouse gas inventory, Natural Gas STAR program, State programs, and other published studies and materials. In addition, during an extended comment period, several commenters provided supplemental data for the agency's consideration. The agency considered all of this for the final rule.

As you are aware, certain outside groups have filed a lawsuit challenging EPA's decision not to explicitly regulate emissions of methane. Can you commit today that you will vigorously defend your rule against this challenge and not enter into a quick settlement that will require EPA to regulate emissions of methane?

EPA will evaluate the claims but at this time cannot predetermine how the agency will respond.

During your tenure as Assistant Administrator for Air and Radiation, EPA issued new air emission standards for hydraulically fractured oil and gas wells. This rule was challenged by multiple outside groups and EPA indicated earlier this year that it intends to amend and reissue the rule later this year. This February, EPA's Inspector General (IG) issued a report stating that EPA's air emissions data for the oil and gas production sector is lacking and needs to improve. As part of the report, in a memorandum dated November 16, 2012 from you to the EPA IG's office, you agreed with an IG recommendation to develop a cross-office strategy designed to address gaps in the emissions data possessed by EPA on the oil and gas production sector. Do you think it is advisable to delay any new emission rules until this strategy is in place and these data gaps are addressed? Was it a mistake for EPA to propose the air emission rules in light of the data gaps identified in the IG report?

The 2012 oil and natural gas rules were based on the best information available. The final rule achieved significant emission reductions while increasing natural gas supply, providing a common sense answer to a significant environmental concern. EPA continues to refine and improve its knowledge of the oil and gas industry as data and information become available. I can assure you that future policy decisions concerning the oil and natural gas sector will be informed by any new data received.

Former Administrator Lisa Jackson acknowledged that the states "are stepping up and doing a good job" regulating hydraulic fracturing. Do you see a need for the EPA to regulate fracking? Lisa Jackson also answered a question about EPA's ability to keep pace with oversight on day-to-day hydraulic fracturing operations by saying "I don't think we can" and later said EPA is "not nearly large enough to be on the ground the same way" as State regulators. Do you disagree with these comments by Lisa Jackson?

Response: I can't speak to the exact context in which Former Administrator Jackson made these comments; however, I agree with what I perceive to be the sentiment that the State regulators are the primary regulators of fracking activities.

The EPA is currently in the middle of a multi-year, multi-million dollar project examining the relationship between drinking water and hydraulic fracturing at the urging of Congress. At the same time, we understand there have been several petitions to the Agency from groups requesting immediate action on hydraulic fracturing related activities (examples include: TRI Petition in October 2012; TSCA Petition in August 2011; E&P Waste Petition of 2010). Does it make sense for the Agency to wait on the outcome of the national water study before responding to any of these petitions or

developing rulemakings associated with any one of the petitions? If not, what scientific work is being done that would support taking any action at this time? If you are not going to wait before moving forward with regulatory changes, should we continue with the study?

Response: As I understand it, the Agency's study addresses drinking water and the petitions you mention contain questions not limited to the scope of the study. If confirmed, I will take a close look at the interaction between the study and the pending petitions and will ensure that any action taken by the Agency is grounded in science.

Last August, the EPA's Science Advisory Board (SAB) noticed in the Federal Register a call for experts to sit on an ad hoc panel to advise the SAB on the EPA's national hydraulic fracturing and water study. Given the significance of this study into the relationship between drinking water and hydraulic fracturing, shouldn't the panel include experts in the oil and natural gas industry that have direct, current and real world experience in unconventional oil and natural gas development? It has come to my attention that a number of industry experts that were included on the November 2012 list of candidates for the SAB ad hoc panel have been notified that certain financial interests in oil and natural gas companies are considered by EPA to be "disqualifying financial interests" under the Ethics in Government Act of 1978 and related regulations. Isn't there a conflict of interest waiver available for special government employees serving on SAB panels and other committees subject to the Federal Advisory Committee Act? Other federal agencies overseeing regulated industries, including the DOE and FDA have issued waivers to individuals. EPA's own guidance recognizes that a waiver may be warranted when "the participation of the individual is so vital as to waive a conflict of interest." Given that current oil and natural gas experience is important to a study looking at today's drilling and production technologies and EPA has clear authority to waive a conflict of interest based on a disqualifying financial interest, should conflict of interest waivers be used to ensure that current, real world experience in today's unconventional oil and natural gas industry is included on the peer review panel for the EPA study?

Response: From what I understand, members of the panel were chosen because of their scientific expertise and represent a wide variety of expertise areas. If confirmed, I would be happy to discuss this issue with you further.

EPA has repeatedly stated that with regard to its studies associated with hydraulic fracturing, a transparent, research-driven approach with significant stakeholder involvement can address questions about hydraulic fracturing and strengthen the nation's clean energy future. However there are several examples, such as Dimock, PA, Parker County, Texas, and Pavillion, Wyoming where it appears the Agency is more interested in rushed judgments, which turn out to be inaccurate, and placing information in the hands of the media rather than undertaking a sound scientific approach to addressing fundamental questions. Will this continue to be the Agency's response to difficult technical issues under your leadership?

Response: As I have previously stated, I believe that the Agency's actions should be guided by sound science and the law, and if confirmed, I would continue to affirm those principles.

Congress made clear in the Energy Policy Act of 2005 that the states are responsible for regulating hydraulic fracturing within their borders, and that the EPA has a very limited role regulating hydraulic fracturing through the Safe Drinking Water Act. EPA has constantly pushed to expand its reach beyond what Congress has authorized, and that seems to be what the agency is attempting to do with draft guidance on the use of diesel fuels in hydraulic fracturing issued last year. The guidance offers a vague and unworkable definition of "diesel fuels," which covers more than just diesel fuels, and unnecessarily calls into question the legitimacy of decades-old, state-run regulatory programs that to date have produced zero cases of groundwater contamination as a result of hydraulic fracturing. If you are confirmed, will you withdraw this draft guidance? What are the plans of the Agency with regard to the diesel issue? What is the timing?

Response: As I understand it, EPACT 2005 specifically exempted diesel fuel from the exclusion from the Safe Drinking Water Act. If confirmed, I will work with you on the specifics of the issue of diesel fuel use in fracking.

The president as well as top officials in the Department of the Interior and Department of Energy have emphasized the importance of shale gas development and touted the increase in U.S. oil and natural gas development. The use of hydraulic fracturing and horizontal drilling has been essential to this increased development of oil and natural gas as well as the resurgence of American industry including the manufacturing sector. Before Congress in May 2011 former EPA Administrator Lisa Jackson testified to the absence of any "proven case where the fracking process itself has affected water" and then reiterated in an April 2012 interview that "in no case have we made a definitive determination that the fracking process has caused chemicals to enter groundwater." Do you agree with this position? Are you aware of any definitive determinations that would contradict these statements?

Response: Although I am not familiar with the exact context of her testimony, I am not aware of any definitive determinations that would contradict those statements.

In December 2011, EPA released a draft report entitled "Investigation of Ground Water Contamination near Pavillion, Wyoming." This report concluded that fracking fluid was present in groundwater at Pavillion and set off newspaper headlines suggesting that EPA had a documented case of groundwater contamination from shale gas development activities. In January 2013, over a year later, EPA announced it was delaying the release of findings in the Pavillion matter by 8 more months to evaluate new data. Do you believe that EPA's Pavillion draft report met the standards of quality assurance and scientific rigor that you will expect as EPA Administrator?

Response: I have not had the opportunity to review or be briefed on that particular draft report, so I can't speak to its quality; however, if confirmed, I will hold the Agency to the highest scientific standards.

Will you commit that EPA's final report on Pavillion will be undertaken in accordance with EPA standards on quality assurance and with appropriate opportunities for peer review?

Response: If confirmed, I commit to ensuring that Agency standards for quality assurance and peer review are followed.

Do you believe that EPA should refrain from issuing conclusions such as those reached in the Pavillion case before having all of the relevant data confirmed and subjected to Agency-standard quality controls and peer reviews? As Administrator will you encourage EPA officials to refrain from making public conclusions or accusations such as these prior to confirming that the conclusions reached are supported by scientific evidence?

In December 2010, EPA's Region 6 issued an emergency order under the Safe Drinking Water Act alleging that gas wells operated by Range Resources in Parker County, Texas were leaking methane into local residences. Once again, this led to headlines indicating that EPA had linked shale gas development to groundwater contamination. In April 2012, this case was dropped. As Administrator will you encourage EPA officials to refrain from making public accusations such as these prior to confirming that the conclusions reached are supported by scientific evidence?

In 2011, EPA investigated groundwater contamination issues in Dimock, Pennsylvania. While this investigation triggered headlines suggesting that hydraulic fracturing was responsible for water contamination, EPA testing in 2012, indicated that there was no risk to human health from the drinking water and that no significant levels of fracture fluid had been found. Based on the discontinued or discredited investigations in Pavillion, Wyoming, Parker County, Texas, and Dimock, Pennsylvania, do you think that EPA has a credibility problem with its actions relating to hydraulic fracturing? What steps will you take as Administrator to address this before the release of any further reports on hydraulic fracturing?

Response (to the three questions above): If confirmed, I will work to ensure that EPA work is guided by the requirements of the law, the best available science and information, principles of scientific integrity, transparency, and continued stakeholder engagement.

With EPA's record on Pavillion, Dimock, and Parker County, how can the public be confident the largely agency water study will be conducted based upon sound science?

Response: I believe that sound science is crucial for the Agency's work. If confirmed I commit to ensuring that the study integrates sound science.

How will information received at various stakeholder meetings be used with the study?

Response: If confirmed, I will support a transparent research-driven approach, with significant stakeholder involvement to address questions about hydraulic fracturing while strengthening our nation's clean energy future.

When will testing of the prospective sites begin? Can you tell us where these sites are located?

Response: If confirmed, I commit to look into this issue.

What involvement have State officials, and organizations such as the Ground Water Protection Council, have with the study?

Response: The vast majority of my career has been at the State and local level. I know that in order to make environmental progress, we need to have partnerships with the States. If confirmed, I will ensure that States and the Federal government work together, collaboratively to solve problems.

Why did EPA decide to test retrospective sites to start the study? As we have seen with Pavillion and other such sites, going back in time it makes it very difficult to have a baseline and to determine if there are any issues. Why did the agency not start with prospective sites, and test the technology in real time?

Response: If confirmed, I commit to look into this issue.

How much has EPA spent on the hydraulic fracturing study to date? How much do you anticipate that it will spend before it is completed in 2014? Can you provide a breakdown of how that money has been allocated by EPA? Have other agencies spent funds on the study as well? If so, how much?

Response: If confirmed, I commit to look into this issue.

What has been the involvement of the White House Hydraulic Fracturing Task Force? Have they been overseeing the study? Have they been briefed on the study? What about other agencies, who else is now involved with the study?

Response: If confirmed, I will review the Agency's involvement with the Task Force.

What is EPA's policy on Instant Messaging (IM)? Has EPA taken steps to preserve IM communications consistent with their obligations under the Federal Records Act? Have IM records been destroyed? Will EPA commit to releasing IM's that are responsive to FOIA and Congressional requests?

Response: As I said during my confirmation hearing, I do not use Instant Messaging. If I'm confirmed, I commit to reviewing the Agency's policies on this topic. Additionally, I commit that if I'm confirmed, I will work with other agency officials to continue ongoing efforts to ensure compliance with the Federal Records Act and the Freedom of Information Act, in addition to being responsive to Congressional requests.

A few years ago, the EPA Inspector General raised serious procedural questions about EPA's compliance with its own peer review guidelines. What has been done to ensure that the EPA peer Review requirements are followed?

Response: Peer review is a critical step to ensuring the integrity of our scientific and technical work products, as well as to ensuring that our decision makers are fully informed. The EPA has a long and substantial history implementing peer review in its programs. I am told that currently, the EPA uses the 3rd Edition of the *Peer Review Handbook* and the 2009 addendum to promote consistency not only across the Agency, but with the Office of Management and Budget's 2004 *Final Information Quality Bulletin for Peer Review*, as well as other relevant policies and guidelines.

Can you give me assurances that EPA will follow all requirements for having independent peer review of significant technical assessments?

Response: Yes. The EPA continues to evaluate its peer review processes to determine whether improvements are needed.

Do you think that publication in peer reviewed journals is the same thing as the independent peer review discussed in the EPA peer review guidelines?

Response: I understand the need for independent peer reviewed science. Without knowing more about the context of the question, it is difficult to comment beyond that; however, I will commit that if I'm confirmed, independent peer review continue to be an important part of the science used by and conducted by the Agency.

Will you commit to send this committee and the House Speaker a detailed report of how EPA has responded to the Inspector General's report, with a list of those convened independent peer review panels?

Response: I am not familiar with that particular report or to which panels you refer, but if confirmed, I will commit to take a look at the Agency's response and work with you to get additional information that you may be seeking.

Can you commit to ensuring that all draft and final assessments released by the IRIS program are consistent with the recommendations of the recent NAS Formaldehyde committee which recommended changes for all IRIS assessments, not just formaldehyde?

Response: I agree that strong science should be the foundation of all the work that the Agency conducts. If I'm confirmed, I will carefully consider the recommendations of the recent NAS Formaldehyde review and will work with career scientists within the Agency to ensure that we have a robust, open and transparent scientific process.

Currently the IRIS program does not consider natural background levels of chemicals in the environment or levels produced by the human body when developing hazard values. Do you support this approach? As Administrator, how will you improve the development of IRIS hazard values to make sure they pass a reality check and don't overestimate existing natural exposures that are not known to be associated with any adverse effects at naturally low exposure levels?

Response: I completely agree that strong science should be the foundation of all the work that the Agency conducts. If I'm confirmed, I will work with the scientists within the Agency, and outside of the Agency, to ensure that all of our work reflects the best possible science.

In a letter to Dr. Kenneth Olden from the Formaldehyde Panel of the American Chemistry Council dated January 4, 2013, stakeholders called for an "open scientific forum" prior to the release of the revised draft assessment, to focus on the epidemiology studies and mode-of-action data concerning the possible causal association between exposure to formaldehyde and leukemia. As you know, the National Academy of Sciences in its highly critical review of the 2010 draft IRIS assessment of formaldehyde cast significant doubt on such a causal association. It is our understanding the Office of Research and Development is resistant to convening such a science forum. We find this position incomprehensible considering the criticism EPA has endured over this particular IRIS assessment. Will you commit to instructing ORD to convene the workshop prior to release of the discussion draft, to publically document the findings and conclusions of the workshop and to incorporate those findings and conclusions in the discussion draft?

Response: I am unaware of the specifics of this issue, but I believe that it is important to share scientific view points. If I am confirmed, I commit to looking into this issue.

A recent analysis presented at the Society of Toxicology meeting showed that 67% of the Hazardous Air Pollutants (HAPs) have no IRIS value. What are the criteria for selecting chemicals for assessment within the IRIS Program? Do you believe that HAPs should be priorities for assessment within the IRIS program? Will you commit to developing a clearly articulated prioritization process for high priority IRIS assessments that benefits from, and is responsive to, engagement from all stakeholders?

Response: I am quite aware of the impacts associated with Hazardous Air Pollutants from the perspective of EPA's office of Air and Radiation, but I am not familiar with the issue you raise with respect to the IRIS assessment. If I'm confirmed, I will look into this issue and ensure that the prioritization of the IRIS program is appropriate.

The scientific integrity of EPA's hallmark Integrated Risk Information System (IRIS) program has been questioned by Congress as well as the National Academies of Science (NAS). While Dr. Ken Olden is working to bring new leadership to the IRIS program, there is much more work that needs to be done. Can you commit to ensuring that all draft and final assessments released by the IRIS program are consistent with the recommendations of the recent NAS Formaldehyde committee which recommended changes for all IRIS assessments, not just formaldehyde? Will you ensure that as part of the improvements in the IRIS program, the Agency will move away from outdated default assumptions and instead always start with an evaluation of the data and use modern knowledge of mode of action -- how chemicals cause toxicity -- instead of defaults? Do you agree that all studies should be independently judged based on their quality, strength, and relevance regardless of the author affiliation or funding source? To further improve the IRIS Program, will you commit to revising the way hazard values are presented to the public to ensure that critical science policy assumptions are transparently presented and not comingled with scientific assumptions? Currently the IRIS program does not consider natural background levels of chemicals in the environment or levels produced by the human body when developing hazard values. Do you support this approach? As Administrator, how will you improve the development of IRIS hazard values to make sure they pass a reality check and don't overestimate existing natural exposures that are not known to be associated with any adverse effects at naturally low exposure levels?

Response: I am unaware of the specifics of this issue, but I completely agree that strong science should be the foundation of all the work that the Agency conducts. If I'm confirmed, I will work with the scientists within the Agency, and outside of the Agency, to ensure that all of our work reflects the best possible science.

Currently the IRIS staff are the sole arbiters of whether and to what extent draft IRIS assessments should be revised to reflect input from peer reviewers and the public. EPA’s own Scientific Advisory Board has recommended the use of a “monitor” or “editor.” Will you commit to using a 3rd party, independent of the IRIS program, to ensure that EPA staff have sufficiently considered and responded to peer reviewer and public input before assessments and other documents are finalized?

Response: If I’m confirmed, I commit to working with scientists such as Dr. Ken Olden and others to ensure that the IRIS program is as efficient, robust, and transparent as possible. It is imperative that sound science be the basis of all decisions that the Agency, as well as the IRIS program, makes.

317. What role will EPA play in the development of the State Department’s Final Environmental Impact Statement for the Keystone XL pipeline permit?

318. What role will EPA play in the development of the Administration’s National Interest Determination for the Keystone XL pipeline permit?

319. According to a State Department spokeswoman, the agency has been working with the EPA on the latest Draft Supplemental Environmental Impact Statement. What role has EPA played in the Draft SEIS?

320. The State Department is in the midst of an open comment period on the Draft Environmental Impact Statement for the KXL project. What do you think about State’s climate estimates in the new Draft Supplemental EIS? Do you think they took a thorough enough look at the GHG emissions?

321. In the draft SEIS, the State Department seems to indicate that Keystone XL is the safest, most environmentally responsible way to deliver the oil that refineries and consumers need to fuel our economy, businesses, homes and maintain our quality of life. What are your thoughts on that?

322. The DSEIS noted that Keystone XL would result in “no substantive change in global GHG emissions” and it is “unlikely to have a substantial impact on the rate of development in the oil sands, or on the amount of heavy crude oil refined in the Gulf Coast area.” Based on your agencies review of the Draft SEIS and your office’s work in helping the State Department develop the latest Draft SEIS, would you comment on those statements?

Response (to Keystone XL questions): The State Department has long held the permitting authority for energy projects crossing international boundaries, including the Keystone XL pipeline project, and for gathering all facts necessary to make such permitting decisions. Accordingly, the State Department has overseen a process that provides for input by several federal departments, interested stakeholders, and members of the public. The State Department’s publication of the Draft Supplemental Environmental Impact Statement marks an important step in that process. The public and all interested stakeholders will now have an opportunity to comment on the Draft Supplemental EIS. Any comments on the DSEIS should therefore be directed to the State Department. I understand that EPA has reviewed the DSEIS

and made appropriate comments. Ultimately, the decision on TransCanada's permit will be based upon a "national interest" determination, taking all relevant factors into account.

LCFS:

Several bills have been introduced in the U.S. Congress to establish a federal low-carbon fuel standard, or "LCFS" – including by then-Senator Obama in 2007. In fact, LCFS was originally part of the 2009 Waxman-Markey climate bill before being removed at the request of a number of Democrats. However, given that efforts to move LCFS legislation through Congress have failed, some proponents of such a program have raised the question of whether EPA might implement a federal LCFS through regulation. Do you believe that EPA has the statutory authority, under the Clean Air Act to promulgate a federal low-carbon fuel standard? If so, what is the legal basis upon which the EPA has the authority to promulgate an LCFS?

During the previous administration, in the July 11, 2008, Advance Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions under the Clean Air Act, EPA solicited comment on whether the agency had the authority under the Clean Air Act to design and implement a new GHG fuel program that is broader in scope than the RFS program. EPA has not addressed this issue further at this time. The agency is not considering nor does it currently have any plans to establish an LCFS under the Clean Air Act.

You may be aware a study was done in 2010 by Charles River Associates, a highly regarded economic forecasting firm, on what the impacts of a national LCFS program would be. The results were fairly impressive – up to 4.5 million American jobs lost, a reduction in U.S. GDP of up to \$750 billion, and an increase in gasoline prices of up to 170 percent over a 10-year period. In fact, a number of studies have analyzed what the results of an LCFS would be, either at the state, regional, or national level – and the consensus is that there would be universally negative, severe economic impacts. These studies all used the Energy Information Administration's projections for the availability of some of these low-carbon fuel options, such as cellulosic ethanol and electric vehicles. In light of the conclusions from these studies, will the Agency seek to promulgate a federal LCFS during the current Administration? If so, how does the Agency intent to mitigate the consumer costs associated with an LCFS?

I am not personally aware of the study to which your question refers, and EPA is not considering nor does it have any plans to seek to establish a federal LCFS.

Given the numerous problems now evident with the federal Renewable Fuels Standard, the prospect of simply replacing the RFS with a federal LCFS is starting to be discussed by some in Congress. What is the Agency's position on this possible substitute?

I am not aware of any current legislative proposal to replace the RFS with a federal LCFS, but in any event EPA has no position on any such proposal.

Can you discuss the problems associated with potential "fuel shuffling" that might occur as the result of the imposition of an LCFS? Does the agency have the ability to prevent such compliance approaches?

EPA is not considering nor does it have any plans to seek to establish a federal LCFS, and I am not familiar with the issue to which your question refers.

Lead

According to a recent lawsuit filed by environmental groups, EPA has known for a decade that "general aviation aircraft" are the single largest source of lead emissions. Yet, EPA has made its own judgment not to issue an endangerment finding regarding lead emissions from air plane fuel. Why has EPA decided to not regulate lead emissions from aircraft which it has acknowledged is the largest source of lead emissions?

EPA has not made any decisions on whether to regulate lead emissions from aircraft at this time. EPA is currently conducting the analytical work, including modeling and monitoring, to evaluate whether lead emissions from the use of leaded aviation gasoline (avgas) in piston-engine aircraft cause or contribute to the endangerment of human health or welfare. Any proposed determination with regard to endangerment would be subject to notice and comment, and we estimate the final determination will be in mid-to-late 2015. If a positive endangerment determination were made, as part of any future assessment of control measures, EPA would consider safety, fuel supply, and economic impact issues, including effects on small businesses.

On March 7, EPA responded to questions for the record from a Senate hearing, held last summer, regarding lead-based paint exposures. In the response, EPA cited 8 studies as "relevant" to information to lead-based paint (LBP) and renovations in public and commercial (P&C) buildings. On April 9, EPA responded to another letter on this issue. This time, EPA identified 5 studies as "relevant" to LBP and renovations in P&C buildings. In fact, 3 of the same studies cited in the April 9 letter were also cited in the March 7 letter. One of the studies cited twice plainly states: "There are no data at this time to assess whether environmental exposures monitored in target housing are representative of environmental exposures encountered in public and commercial buildings." (Environmental Field Sampling Study, Volume I Technical Report, (May 1997) at p. 4-5).) Why did EPA cite this study, when it is plainly not relevant to lead-based paint exposures in public and commercial buildings?

In EPA's April 9 letter, one of the new studies that the agency cites is a "Health Hazard and Evaluation Report" out of the University of California at Berkley, from July 2001: <http://www.cdc.gov/niosh/hhe/reports/pdfs/1999-0113-2853.pdf>. This study states (at p. 1) that the project took place at 3 "unoccupied" buildings that were scheduled for demolition: two 2-story multifamily residences, and a "daycare center." All three of these buildings would be already covered

under EPA's current lead-based paint program for "target housing." Were any public or commercial buildings assessed in this 2001 Berkley study? If no, then why did EPA cite it as relevant to the issue of lead-based paint exposures and renovation activities in public and commercial buildings?

In fact, in looking through all of the studies cited in both the March 7 and April 9 letters, all of the structures assessed in these studies concern "target housing" or "child occupied facilities," which are regulated under EPA's current residential lead paint rules. In all of these studies, the only non-residential structures considered by EPA that we could identify were: (1) a school built in 1967; and (2) a 1-story office building well over 150 years old. Does EPA think that a major new regulatory program, regulating renovation activities in public and commercial buildings across the U.S., can be supported by the studies on a 1960s-era school, and a 150-year old, 1-story office building? In any of the studies cited by EPA, can the agency point to any structure that is a public and commercial building, where lead-based paint issues and renovation activities were assessed? Would you please describe any non-residential structure that was considered in these studies? Will your staff meet with interested private sector stakeholders, who would be immediately affected by any new lead-paint program, to go over these studies jointly with Committee staff? In the April 9 letter, EPA also refers to a lead "technical studies" webpage: <http://www2.epa.gov/lead/technical-studies>. Can you show us where, in any of these studies, public and commercial buildings specifically were assessed for possible lead-based paint hazards?

Shouldn't EPA have a public and commercial building "hazard" finding in place first, and then determine if it needs to regulate renovation activities? After all, this is the sequence the agency followed for pre-1978 "target housing." Over seven years lapsed between the residential "hazard" finding, and the eventual residential "renovation" rule. Why isn't EPA pursuing the same process here? What "hazard" may any commercial building renovation regulations be designed to prevent?

The February 13 letter to EPA explained that this commercial building rule will have great consequences for federal buildings – including those right here on Capitol Hill. In EPA's April 9 response, the agency generally identified the agencies and departments it has, or plans to, contact in the federal buildings community. But the agency has not provided the Committee with any substantive, detailed plans for how it is coordinating with agencies and departments like the General Services Administration, the Architect of the Capitol, or the military branches. Please give details on the steps EPA has taken to work with GSA and other federal building managers to carefully study lead-based paint hazards in federal buildings. What outreach plans does EPA have in place to gather substantive information on lead-based paint issues in public and commercial buildings? Does EPA know what the lead paint hazards are in its own buildings?

Has EPA contacted the Architect of the Capitol to get an understanding of any lead paint hazards on Capitol Hill – such as at the House Cannon Building, which is undergoing a major renovation project?

Would EPA be willing to meet with the GSA, Architect of the Capitol, the military branches, and other federal facilities owners – along with EPW Committee staff – to get a better understanding of EPA's plan to coordinate with the federal buildings community on this rule?

We understand that affected real estate and contracting trade groups have offered to meet jointly with EPA, GSA, and other federal building managers on this issue. Does EPA plan to hold such a joint meeting with real estate and contracting trade groups? If yes, when?

Response (to the eight questions above): I support the Agency's goals to reduce childhood lead poisoning during renovation and repair activities, including in public and commercial buildings if they pose a risk. If confirmed, the Agency and I will work with you and other members of the Committee, as well as the range of entities who may be affected by the Agency's efforts on this important issue.

In November 2012, EPA's Region 3 wrote a letter to the Federal Energy Regulatory Commission (FERC) recommending that FERC and DOE expand their NEPA analysis of LNG export facilities to include a study of the indirect and cumulative environmental impacts of exporting LNG. Do FERC and DOE have the sole statutory and regulatory authority to review and approve LNG export applications?

Response: I am not familiar with the details of LNG export applications, but it is my understanding that FERC and DOE are the two Agencies with approval authority for export facility applications.

What is your view of EPA's role in the LNG export application process?

Response: Again, I am not familiar with the details of the LNG export application process; however, it is my understanding that as part of the process under the National Environmental Policy Act, EPA can offer comments to FERC on the scope of the environmental review.

What "indirect" environmental impacts might result from LNG exports?

Response: I am not familiar enough with the process of LNG exports or with any specific proposals to offer concrete thoughts on what might constitute direct or indirect effects of any particular project. If confirmed, I would work with the Agency and with the Administration to make an appropriate determination on what, if any, environmental considerations might be appropriate to consider through the FERC led NEPA process.

NAAQS SO2 (Marine)

The International Maritime Convention (IMO) has amended the International Convention for the Prevention of Pollution from Ships (MARPOL) to require ships operating in Emissions Control Areas (ECA), which include the vast majority of the US coastline, to use only low sulfur fuels. The first stage

of this program, which required use of fuel oil with a sulfur content of 1% or less came into effect this past summer and has led to increased shipping costs. There is evidence that these stringent limits are having a significant financial impact on short seas shipping companies, and, in some cases, higher shipping costs are resulting in higher costs for downstream consumers in the U.S.

For this reason, I am troubled that by August 2015, ship owners operating in these waters will be required to use fuel that contains no more than 0.1% sulfur. I have significant concerns about the impact such a cut would have, not just on short seas shipping companies, but the health and safety of the U.S. economy.

The ECA is one of the most important environmental air programs established in the past decade and will result in the prevention of tens of thousands of premature deaths. EPA and Coast Guard are committed to allowing flexibilities allowed under the applicable IMO requirements that can reduce the costs of compliance with the ECA and incentivize advanced technologies, without compromising the environmental benefits of the ECA. In 2030 the combination of our national standards and ECA controls will prevent between 12,000 and 31,000 premature deaths and 1.4 million work days lost. The benefits of the coordinated strategy in 2030 are estimated to be between \$110 and \$270 billion, which is up to 90 times the projected costs of \$3.1 billion.

MATS:

In March 28, 2013 the Environmental Protection Agency (EPA) published updated emissions standards for power plants under the Mercury and Air Toxics Standards (MATS). The MATS rule imposes sweeping new emissions requirements for power plants, and EPA expects that the MATS rule will entail upwards of \$10 billion in compliance costs, making it the most expensive rule in EPA's history. In promulgating the MATS rules, EPA relied heavily on the claim that the rule will benefit public health through decreases in particulate matter pollution (PM). However, regulation of PM is primarily accomplished through National Ambient Air Quality Standards (NAAQS), which are required to be set at levels that provide adequate protection for the public health or welfare. Accordingly, it appears that the agency has set a NAAQS standard for particulate matter at a level insufficiently protective of public health and welfare. Can you share your thoughts on this?

Even after several decades of pollution control laws, until MATS there were no national limits on emissions of mercury and other air toxics from power plants. Power plants emit mercury, other metals, acid gases, and other air toxics – as well as particulate matter – all of which harm people's health. The rule regulates mercury and other air toxics, but the control technologies installed to reduce these air pollutants also yield significant reductions in particulate matter.

What percentage of the health benefits in all EPA's air regulations taken together over the last five years are attributable to collateral reductions in particulate matter arising from these regulations?

EPA strives to quantify all of the anticipated benefits for our air rules. Pollution controls often reduce multiple pollutants, leading to significant co-benefits from the application of those controls. For example, pollution control devices such as scrubbers reduce SO₂ emissions, which also provide significant PM_{2.5} co-benefits. In some cases, the EPA does not have the data to quantify all of the benefits associated with reducing air pollution, which prevents EPA from quantifying all the benefits associated with its rules. The agency does not have the specific calculation you request readily available.

EPA's website says that mercury "can travel thousands of miles in the atmosphere before it is eventually deposited back to the earth in rainfall or in dry gaseous forms." If this is true, wouldn't rising consumption of coal in countries like China and India (whose regulatory regimes are less stringent than our own) offset any domestic mercury reductions connected to the MATS rule? In fact, if more US manufacturing moves to these countries, which have less stringent emission controls than the US, wouldn't a possible result of MATS be an increase in global mercury emissions?

A substantial portion of the mercury that is deposited in the U.S. comes from U.S. sources, especially near the source. For example, based on EPA's air quality modeling for the Mercury and Air Toxics Standard, U.S. EGUs contributed up to 30 percent of total mercury deposition in some U.S. watersheds in 2005. To reduce atmospheric transport of mercury globally, EPA together with the State Department is participating in United Nations efforts to encourage all countries to reduce their mercury emissions. Those efforts include negotiations toward an international agreement and partnerships for training and information on strategies for reducing mercury emissions.

During consideration of the MATS rule both Commissioners at FERC and outside electricity experts raised concerns about the potential for forced retirement of generating facilities causing costly reliability problems. EPA even admitted that localized reliability problems could result from the rule. Given that the construction and use of generating facilities is time and capital-intensive, at what point do you think that cumulative regulatory burdens on the electricity sector may create reliability problems?

EPA takes electric reliability concerns very seriously. EPA determined that many existing coal plants are already very well controlled for pollution, and other coal plants have the ability to retrofit with widely available pollution control technologies. EPA and DOE analyzed the resource adequacy impacts of the MATS rule prior to its finalization and determined that the rule would not adversely affect resource adequacy in any region of the country. Additionally, since finalizing MATS, EPA has continued to work with FERC, DOE, state regulators, and the regional transmission organizations and other planning authorities to help ensure early planning and prompt action to assess and mitigate any potential reliability issues associated with implementation of EPA rules. Those efforts have confirmed EPA's analysis that utilities and grid planners have significant tools to address reliability challenges within the timeframes set forth in the Clean Air Act. EPA has taken steps to ensure broad availability of an additional year to comply with the MATS rule where needed for technology installation, including in situations implicating reliability considerations. To the extent any localized reliability challenges emerge, there are adequate tools to address them. For example, concurrent with the final MATS rule EPA has identified a clear pathway for up to one additional (fifth) year to come into compliance where needed to address a documented reliability issue.

In March, 2012, a federal court struck down EPA's retroactive revocation of a mining-related CWA Sec. 404 permit, holding unequivocally that EPA has no authority to retroactively veto CWA Sec. 404 permits issued by the U.S. Army Corps of Engineers. EPA has appealed the decision, maintaining that at any time after the issuance of the permit – even where, as here, the permit has been being properly followed for several years and EPA had worked with the permittee and the Army Corps for ten years prior to permit issuance to reach an acceptable alternative – EPA may veto the permit. What do you

think the practical effect on industry would be of having Sec. 404 permits be subject to EPA's veto whenever the agency chooses?

Response: I understand the important concerns raised by your question regarding the use of EPA Clean Water Act authorities and potential effects on the nation's business community. During the pendency of the appeal of the district court's decision, EPA will not exercise its 404(c) authority after a permit is issued. If I am confirmed, I look forward to working with you to assure that the final court decision is implemented consistent with the law and in careful consideration of the issues you raise.

During deliberations on the Clean Water Act in Congress, Senator Muskie note that there are three essential elements to the Clean Water Act -- "uniformity, finality, and enforceability". How do the assertions made by EPA regarding the scope of its authority under Sec. 404 comport with the notion of permit finality?

Response: I appreciate your concerns regarding the importance of providing permittees with a sense of finality when their permits are issued. If confirmed, I will work to implement the CWA to provide the uniformity, finality, and enforceability that are so important in our regulatory programs.

Has EPA considered what effects its actions might have on state SMCRA permitting programs?

Response: It is very important to me that EPA implements its responsibilities in coordination with our federal, state, and local partners, including our partners in state and federal SMCRA permit programs. If confirmed, I will make respectful coordination with our partners an Agency priority.

EPA is on schedule to propose a new ozone NAAQS this December and finalize it in September 2014. We understand that EPA's Clean Air Science Advisory Committee (CASAC) has recommended that the standard be set between 60 and 70 ppb based on recent health studies and has asked EPA to evaluate a standard at 55 ppb. We are concerned about the economic impacts of any change to the standard (EPA has estimated the costs of a 60 ppb standard to be \$90 billion/year). Can you identify the language in Section 109 of the Clean Air Act that prohibits EPA from considering costs? Have you seen any of the maps of projected nonattainment areas at 60 ppb? Most of the country would be nonattainment, and the ability of the regulated community to obtain a permit for the construction or expansion of any new manufacturing or power generation facility could be compromised. I understand such impacts are being felt right now from the rules your department issued in December to tighten standards for particulate matter

The U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that in setting standards that are requisite to protect public health and welfare, as

provided in section 109(b) of the Clean Air Act, EPA may not consider the costs of implementing the standards.

I also understand that while the agency tightened the particulate matter standard, you did not issue any accompanying rules or guidance that would allow for smooth implementation. Can you tell us how and when EPA will prepare implementation rules for particulate matter and ozone to prevent disruptions to the economy, and in particular how EPA will ensure the availability of low-cost offsets to allow new plants and the expansion of existing plants?

The PM_{2.5} NAAQS were revised in December 2012, and EPA is working to develop guidance and rules to provide for smooth implementation. EPA recently issued guidance on the area designations process. EPA is also developing an implementation rule that we expect to finalize soon after nonattainment areas are designated. Should EPA revise the ozone NAAQS, we would intend to develop an implementation rule for that standard in a similar manner, and finalize that implementation rule around the time that area designations are finalized.

Regarding the new source review (NSR) pre-construction permitting programs, EPA included a transition (or regulatory grandfathering) provision in the final 2012 PM NAAQS rule to help smooth the implementation of new requirements associated with the revised NAAQS under the PSD program. Emission offsets are generally associated with non-attainment NSR, which would apply to any newly designated nonattainment areas upon the effective date of such designations (2015 at the earliest). Most states projected to have areas that may be designated nonattainment for the revised PM NAAQS already have nonattainment NSR programs for PM_{2.5} (i.e., they currently have areas that are or were previously designated nonattainment for PM_{2.5}), including functioning emission offset programs. Those same programs will apply to any newly designated nonattainment areas. For the limited areas that do not have an existing nonattainment NSR program for PM_{2.5}, the lead time built into the designation process will provide the opportunity for states and sources to plan for projected offset needs.

EPA routinely justifies more stringent air quality standards on the basis of reducing asthma attacks. In fact, EPA credits its rules with avoiding about a million asthma attacks each year. However, while U.S. emissions of criteria pollutants have been cut by about 50% since just 1990, the incidence of asthma attacks has increased. Taken together, these two facts suggest that EPA efforts to further reduce emissions and consequent health benefits will not necessarily be correlated. In fact, the US Government's own CDC cites numerous triggers for asthma attacks that are not related to ambient air quality. Of course, the dramatic improvements to our air quality must be maintained, but each incremental improvement comes at a greater and greater cost. Is it time for EPA to re-think some its valuations of health benefits? Is it time to consider that implementation of the rules, ultimately yield a negative impact on consumers' health and welfare because they make them poorer?

EPA's approach to estimating the health benefits associated with reducing air pollution, including avoided asthma attacks, is based on the best available, peer-reviewed science. Projected health benefits from EPA's recent Clean Air Act rules, including avoided asthma attacks, are substantial and often substantially outweigh projected costs. Newer scientific studies have shown that some pollutants can harm public health and welfare even at lower levels than before.

The U.S. has achieved significant progress in reducing air pollution in the 40 years since the Clean Air Act's passage. According to EPA statistics, total emissions of the six principal air pollutants have dropped by 59 percent since 1970. Current federal regulations will continue this progress by significantly reducing ground level ozone-causing emissions over the next two decades. Emissions from power plants are expected to be cut in half by 2015 and the emissions from cars and trucks are expected to be reduced by 70 percent by 2030. Do you think that Americans are enjoying the benefits of cleaner air, and will continue to enjoy those benefits as the air gets cleaner in the future, regardless whether the existing standards are adjusted?

Despite dramatic progress improving air quality since 1970, air pollution in the United States continues to harm people's health and the environment. Under the Clean Air Act, EPA continues to work with state, local and tribal governments, other federal agencies, and stakeholders to reduce air pollution and the damage that it causes.

Ozone NAAQS

In 2010, EPA proposed to reconsider the existing ozone NAAQS, an effort the Administration ultimately abandoned. The standards your office proposed could have potentially tripled the number of ozone non-attainment counties. In fact, many of America's most pristine national parks would have failed those standards. Do you continue to believe that it make sense to pursue a policy that puts the Grand Canyon and Yellowstone National park in non-attainment? How would developed areas ever comply with such a standard, if wilderness areas cannot?

The Clean Air Act directs EPA to set NAAQS that are requisite to protect public health with an adequate margin of safety and the public welfare from any known or anticipated adverse effects of air pollutants. These standards are based on consideration of the most up- to-date scientific evidence and technical information, advice from CASAC, and public comments. As part of the ongoing review of the ozone NAAQS, EPA will evaluate the extent to which it is appropriate to revise these standards in order to protect against adverse public health and welfare effects.

EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over \$90 billion per year. President Obama halted that effort, citing "regulatory burdens and regulatory uncertainty, particularly as our economy continues to recover." As EPA is now in the process of again reviewing the ozone NAAQS, do you agree with the President that the Administration should be mindful of the potential regulatory burden that revised standards could have on a recovering U.S. economy?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over \$90 billion per year. We are driving manufacturing out of the U.S., to other countries with lax environmental standards. In

analyzing these proposed regulations, does EPA consider the effects of driving manufacturing offshore, to countries with little or no environmental controls?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

EPA revised the ozone NAAQS in 2008 by adopting more stringent standards. Designations for that standard were made last May. EPA has said that it plans to adopt a rule on the content of state plans for implementing the revised standards. The Agency has said that it will propose that rule this coming May. What is the schedule for finalizing that rule?

Once the rule proposing requirements for state plans implementing the standards is published in the Federal Register, EPA will accept public comment for at least 60-days. After carefully considering the comments received, EPA will move as quickly as possible to finalize the rule. Achieving the health benefits required by the CAA will require the combined efforts of federal, state, local, and in some cases tribal governments, each accomplishing the tasks for which it is best suited. The agency is mindful that the requirement to implement the ozone NAAQS comes at a time when many states are facing substantial resource challenges. EPA is committed to working in partnership with states and other stakeholders to share the burden of implementing the ozone NAAQS by promulgating a number of national regulations that will provide significant reductions in ozone precursors.

A tightening of the standard from .075ppb will most likely put a significant amount of new areas into non-attainment. Your Agency has even admitted during the reconsideration in 2009 that “a significant portion of the country” cannot meet EPA’s proposed ozone requirements. Studies also show that if the standard is set at .060ppb that most of the counties that already have monitors would be in violation, as well as a vast majority of unmonitored areas would be in violation of the lower standard. How does EPA expect to handle the significant amount of new counties being in non-attainment, especially with some being in non-attainment for the first time?

EPA has not yet reached a decision about what revisions to the ozone standards may be appropriate in light of the current scientific evidence so it is premature to conclude that a significant number of new counties would be in non-attainment.

This year marks the end of the five year review period for the ozone national ambient air quality standard (NAAQS), which was last set in 2008. Currently, the 1997 standard is still not fully implemented and EPA has yet to resolve issues concerning the 2008 standard. Given the problems and delays in implementation, do you think EPA will recommend a further reduction in the ozone NAAQS standard? If so, what justification does the Agency have for further reducing the standard? Is it not true that air quality will continue to improve without a new ozone NAAQS?

The ongoing review of the ozone standards is part of the EPA’s periodic review of the science and the NAAQS required by the Clean Air Act. Section 109(d) of the Clean Air Act requires EPA to

complete a review of the science upon which the NAAQS are based and the standards themselves every five years. EPA has not yet reached a decision about what revisions to the ozone standards may be appropriate in light of the current scientific evidence.

Given EPA's issues with implementation of the 2008 standard, and that you are still finishing the work to attain the 1997 standard, do you think the Agency's implementation schedule is too aggressive considering so many areas in non-attainment are still struggling to comply with the standard set more than 15 years ago? Is the Agency required by law to reduce the ozone NAAQS following each 5 year review period?

The ongoing review of the ozone standards is part of the EPA's periodic review of the science and the NAAQS required by the Clean Air Act. Section 109(d) of the Clean Air Act requires EPA to complete a review of the science upon which the NAAQS are based and the standards themselves every five years. EPA is not required to reduce the level of the standard in each review; rather, the agency is required to determine what standards are requisite (i.e., neither more nor less stringent than necessary) to protect public health with an adequate margin of safety.

Further reduction of the ozone standard could cost between \$20 and \$90 billion annually according to government estimates and if the standard were set at .060ppb, the lowest in the range EPA considered during the reconsideration in 2009, a NAM study estimated that more than 7 million jobs could be lost. When CASAC and EPA are looking at proposing a range for a new ozone NAAQS, do you consider the impact on jobs and manufacturing in the areas that could be captured under the new standard?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in non-attainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

It seems that EPA tends to look at regulations it promulgates in a vacuum and does not consider how a particular regulation affects another. For example, in order for refiners to remove sulfur from gasoline under the new Tier 3 rule, they will be reducing sulfur, but in exchange they will also be increasing their GHGs. Additionally, the lowering of the ozone NAAQS will also result in an energy penalty for refiners, as their RTOs require more natural gas usage. Why does the agency not consider these types of conflicts before moving forward with regulations that conflict with one another?

EPA works to take a comprehensive approach to its regulations, and offices within the agency coordinate closely to ensure that regulations achieve complementary health benefits and pollution reductions whenever possible. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Additionally, the proposed Tier 3 implementation schedule is aligned with the timeframe for EPA's program for reducing greenhouse gas (GHG) emissions from light-duty vehicles starting in model year 2017. Further, the relatively small projected increase from CO2 emissions from

refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

In the Clean Air Act, please provide your definition of cooperative federalism. Can you conceive of any circumstances where EPA has disagreed with a State's approach, on policy grounds, and decided that the Agency will not intervene to override the state?

Response: "Cooperative federalism" is generally used to describe the Clean Air Act's approach of assigning tasks to EPA and States that, when taken together, result in cleaner air and important public health protections. For example, EPA sets the National Ambient Air Quality Standards for specific pollutants. EPA works with States to set up monitoring networks and to designate areas as ones that are attaining, not attaining or lack sufficient data with respect to the standards. States submit plans that must meet the requirements of the Act, including the requirement to bring all areas into the state into attainment with the Standards. If EPA determines that the plans do not meet the Act's requirements, or if a State fails to submit relevant plan provisions, the Act generally requires EPA to issue a federal plan for that area or state. EPA also issues rules (such as the recently proposed Tier 3 fuel and vehicle regulations) that assist areas in meeting the air quality standards. I can conceive of circumstances where EPA has disagreed with State's approach on policy grounds but did not intervene to override the state because the state met the relevant legal criteria.

Are there any circumstances where a State implementing the Clean Air Act should, as a policy matter, be insulated from EPA interference?

Partnership between the states and the federal government in reducing air pollution is one of the cornerstone principles of the Clean Air Act. For example, EPA sets the National Ambient Air Quality Standards for specific pollutants. EPA works with States to set up monitoring networks and to designate areas as ones that are attaining, not attaining or lack sufficient data with respect to the standards. States submit plans that must meet the requirements of the Act, including the requirement to bring all areas into the state into attainment with the Standards. If EPA determines that the plans do not meet the Act's requirements, or if a State fails to submit relevant plan provisions, the Act generally requires EPA to issue a federal plan for that area or state. EPA also issues federal rules that assist areas in meeting the air quality standards.

Do you believe that the NAAQS review and Implementation process will ever catch up to its statutory 5 year deadlines for review? what steps would you take to have the timing of the NAAQS program comply with the Clean Air Act?

EPA is continuing to work to streamline its NAAQS review process in order to comply with the five-year review cycle established in the Clean Air Act. EPA's goals are to maximize the efficiency and transparency of the process while maintaining its scientific and technical integrity.

On December 7, 2012, a PM2.5 monitor in the North Pole, Alaska registered a concentration of approximately 172 micrograms per cubic meter for the 24-hours of that day, almost five times the EPA health based standard. The average daily temperature for that location was -26 degrees Fahrenheit. PM2.5 comes primarily from combustion, which, given the temperature, was likely wood or fuel oil burning for heating purposes, meaning that people were generating heat in order to survive the cold. Given the choice, many likely chose to survive the elements that day by burning fuel despite the potential long-term health risk associated with being exposed to such a high concentration of air pollution. If confirmed, how will EPA balance incremental, long-term health improvements with the acute, or short-term, health impacts that could occur if the standards are lowered?

As with all NAAQS, EPA's primary PM2.5 standards are set to protect the public health with an adequate margin of safety, based on the body of available health evidence and technical information. In determining whether a given area meets or violates the EPA's 24-hour PM2.5 standard, it is not appropriate to compare a single high day to the standard level. Rather, the 24-hour PM2.5 standard requires that the 3-year average of the 98th percentile of annual 24-hour average PM2.5 concentrations be below 35 micrograms per cubic meter. This approach to determining whether areas meet or violate the 24-hour PM2.5 standard is meant to ensure appropriate public health protection. A single day with a high PM2.5 concentration, by itself, does not result in a violation of the standard.

EPA currently uses a mass based PM 2.5 NAAQS without regard to the chemical make-up of the particulate. Early in the Bush Administration, OMB's then-Director of OIRA, John Graham, wrote a letter to then-Administrator of EPA Christy Todd Whitman, suggesting that EPA needed to redirect Agency research funds to do speciation studies to determine the source of PM2.5 health effects. Do you know if those studies were done? Doesn't the chemical makeup of PM 2.5 effect determine the degree of health impact? Should the PM 2.5 NAAQS be species weighed to better protect the public?

EPA has funded, and continues to fund, a number of research studies evaluating the links between PM composition and toxicity. The agency has invested in a PM2.5 speciation monitoring program since 1999 to provide ambient air data for tracking air quality and to support scientific studies. In addition, the EPA and other organizations (e.g., HEI, EPRI) have funded research on health effects related to PM composition. In the PM NAAQS review completed in 2012, the agency concluded that the currently available scientific information continues to provide evidence that many different components of the fine particle mixture - as well as groups of components associated with specific source categories of fine particles - are linked to adverse health effects. However, the scientific evidence is not yet sufficient to allow differentiation of those components or sources that are more closely related to specific health outcomes, nor is it sufficient to exclude any component or group of components from the mix of fine particles included in the PM2.5 indicator (78 FR 3123). The CASAC, EPA's statutorily mandated external science advisory committee, agreed with this conclusion and with the approach of continuing to define the PM2.5 standards in terms of PM2.5 mass.

If confirmed, will you commit to address NAAQS implementation issues? Can you give the Committee a schedule of concrete actions you will undertake and the deadlines for those actions? Are you open to delaying the effective date of the PM NAAQS until EPA, states and permittees have the right implementation tools in place?

If confirmed, I will continue to be committed to addressing NAAQS implementation issues. EPA can provide the committee a planned schedule of NAAQS-related rules and policy guidance

documents. In general, the agency's objective is to issue rules and policy guidance as quickly as practicable after a NAAQS has been promulgated to facilitate timely state planning. To avoid any delay in achieving the important health benefits of the PM NAAQS, EPA provided a transition mechanism in the final 2012 PM NAAQS rule that allowed for grandfathering of qualifying PSD permit applications by exempting them from new requirements associated with the revised NAAQS. This was the most urgent immediate concern because the regulations otherwise require that PSD permits address all NAAQS that are in effect as of the date of permit issuance. For permit actions that do not qualify for the grandfathering exemption, prior to the effective date of the 2012 PM NAAQS EPA issued draft guidance on performing required air quality impact analyses for PM_{2.5} under the PSD program. In addition to these two actions, the agency continues to work diligently on other aspects of NSR/PSD implementation for PM_{2.5} to ensure that permitting processes are not disrupted or delayed by the revised NAAQS.

What is EPA doing to collect additional relevant data that is necessary in determining the SO₂ emission reductions from prior industry investments to reduce SO₂?

EPA has conducted an extensive stakeholder process to develop a strategy for improving air quality by reducing emissions of sulfur dioxide. The strategy, available at <http://www.epa.gov/oaqps001/sulfurdioxide/pdfs/20130207SO2StrategyPaper.pdf>, outlines the Agency's next steps for designating and implementing the 2010 SO₂ NAAQS. EPA works closely with our state, local and tribal partners to collect regularly emission information, including emissions information about SO₂.

As the EPA considers its approach to implementing the Sulfur Dioxide (SO₂) National Ambient Air Quality Standards, we urge you to ensure States have maximum flexibility to determine the most appropriate approach to accurately establish their attainment status. While the preference is the use of actual monitors in gathering the necessary data, we recognize financial constraints may force States to rely on modeling or perhaps a hybrid approach. The current models and assumptions in EPA guidelines are of concern as they over predict expected ambient air quality levels. Factors such as wind speed, the number of SO₂ sources in a geographic area and the height of SO₂ sources all can create distortions in the data. These distortions can result in pollution controls that are unnecessary from both capital and operating perspectives. Can you assure us that the proposed modeling guidelines will include more accurate assumptions, and not solely worst case scenarios? What types of assumptions are you considering?

EPA is sensitive to and shares the interests of our air quality management partners and others that the modeling to determine compliance with the new national SO₂ standard be as accurate and reflective of what might have been monitored as is possible. EPA's forthcoming modeling technical assistance document will reflect input from the extensive stakeholder outreach efforts that have been underway and the latest techniques. The public and stakeholders have and will continue to have opportunities to comment on EPA's modeling guidance.

NAAQS – SO₂ (Maritime)

I understand and appreciate the benefits of controlling sulfur emissions, and I understand that EPA has provided estimates of the health impacts of using ultralow sulfur fuels in the North American ECA, but why did EPA put a rule in place that will cause customers to utilize higher emitting modes of transportation? Did EPA's analysis consider the fact that this "intermodal leakage" moves the

emissions source from as much as 200 miles offshore to within a few yards of schools, hospitals, residences, and urban areas? If not, shouldn't EPA take a hard look at the real world consequences of the regulation before it potentially pushes thousands more emissions sources into our communities and neighborhoods?

EPA does not agree that compliance with the ECA fuel sulfur limits will lead to transportation mode shift. The majority of the shipping affected by the ECA sulfur limits is made up of international voyages where land-based transportation is not a realistic alternative. Even in cases where mode shift can be contemplated, ships have significant cost advantages over land-based transportation. The North American ECA requires the use of 10,000 ppm sulfur fuel from August 2012 through December 2014, and 1,000 ppm sulfur fuel for January 2015 and later. The 2015 and later ECA fuel sulfur limits are more than 60 times higher than for the ultra low sulfur diesel (ULSD) used in land based modes of transport. EPA performed a detailed analysis of the economic impact of the ECA on ships operating on the Great Lakes, including whether the ECA would lead to a transportation mode shift. This study, which was developed cooperatively with stakeholders, relied on actual routes and freight rates and indicated transportation mode shift is not likely to occur in the Great Lakes area. If the rail, truck and marine freight rates for coastal areas are similar to those for the Great Lakes, then modal shift would also not be expected in other parts of the country.

Would EPA consider other means of reducing sulfur emissions from maritime shipping? Will EPA consider an equivalency for companies that minimize the impact on onshore air quality, rather than only analyzing the mass of SO₂ generated?

EPA is committed to allowing flexibilities allowed under the applicable International Maritime Organization requirements that can reduce the costs of compliance with the ECA and incentivize advanced technologies within the requirements of the ECA. EPA (and Coast Guard) have utilized two flexibilities allowed under the requirements of the North American ECA, approving projects undertaken by TOTE, a U.S. based shipping firm which operates two vessels between Tacoma, Washington and Anchorage, Alaska, and Royal Caribbean Cruises.

In postponing issuance of the revised NAAQS, the President specifically cited economic reasons. Does this conform to EPA's past insistence that they are prohibited by the Clean Air Act from considering economic and other concerns in the setting of standards?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on

reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

A former Administration official (one of your former colleagues) at a panel during the Society of Environmental Journalists meeting in Miami in the Fall of 2012 said that the President committed an impeachable offense by explicitly linking the postponement of the revised ozone NAAQS with the economic recovery. Can you comment?

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In the upcoming ozone NAAQS, EPA has stated that it will rely on one result from one epidemiology study to quantify mortality benefits from reductions in chronic ozone exposure when they are 11 other equally well designed epidemiology studies that suggest there is no increase in risk. Why does EPA focus only on the one positive study and the one positive result within that study to estimate benefits?

As explained in an April 10, 2013 letter sent to you by EPA on this subject (footnotes omitted):

“In developing an ISA [Integrated Science Assessment], the EPA uses a formal causal framework that provides a consistent and transparent basis for integration of scientific evidence and evaluation of the causal nature of air pollution-related health effects. This approach has been reviewed and endorsed by the Clean Air Scientific Advisory Committee (CASAC). This framework employs a five-level hierarchy that classifies the overall weight of evidence and causality using the following categorizations: causal relationship; likely to be a causal relationship; suggestive of a causal relationship; inadequate to infer a causal relationship; and not likely to be a causal relationship. Pursuant to this framework, in order to reach a determination that the weight of scientific evidence is suggestive of a causal relationship, the evidence should include “at least one high-quality epidemiologic study show[ing] an association with a given health outcome.”

The previous scientific assessment for ozone in 2006 concluded that an insufficient amount of evidence existed to suggest a causal relationship between chronic ozone exposure and increased risk of mortality in humans. However, two recent studies provided new evidence for the 2013 assessment. This new evidence is consistent and coherent with the evidence from epidemiological, controlled human exposure, and animal toxicological studies for the effects of

short- and long-term exposure to ozone on respiratory effects. The current body of evidence, including these two high-quality, peer-reviewed studies that observed associations between long-term exposure to ozone and mortality, is suggestive of a causal relationship between long-term exposure to ozone and total mortality.

Your letter stated that 11 earlier studies did not find statistically significant associations between long-term exposure to ozone and mortality and that the EPA selectively relied on the one positive study to support the causality determination of “suggestive.” A key explanation for the lack of associations found in most of these earlier studies is that they did not specifically assess respiratory mortality. However, unlike the earlier studies, Jerrett et al. (2009) did specifically evaluate respiratory mortality and found a statistically significant association. This finding is consistent with other studies finding associations with respiratory effects (e.g., morbidity and mortality). Because of the strength of the evidence between ozone exposure and respiratory effects, it is reasonable to find associations between long-term exposure to ozone and respiratory mortality but not other sources of mortality (e.g., all-cause, cardiovascular, and cardiopulmonary). As noted above, one high-quality epidemiological study showing an association is sufficient for a determination of “suggestive” under the EPA’s causal framework, even if the results of other studies do not consistently show the same association.”

Given the significant controversies surrounding the studies supporting a tightening of the ozone standard, will you commit today to taking comment on the current standard?

The review of the ozone NAAQS is ongoing and EPA is committed to following the science and the law in developing the proposal. As with prior NAAQS rulemaking, the public will have the full ability to comment on all elements of EPA’s proposal and provide EPA with views on whether to retain or revise the current ozone standard.

According to recent NOAA reports, half of all the current ozone exceedances in many areas in the Western US are due to emissions from Asia. How do you plan to address this important problem?

Ozone concentrations can be affected by local, regional, international, and natural sources. EPA analyses indicate that the majority of ozone exceedances within the U.S. are driven primarily by local and regional sources of ozone precursors. For those rare cases in which international emissions can be shown to result in a violation of the NAAQS, there is a specific Clean Air Act provision (Section 179B) that can be invoked to ensure those cases do not lead to inappropriate regulatory consequences.

EPA’s own modeling shows simulated ozone background levels as high as 77ppb – a level that already exceeds the current standard. There is also strong evidence from NOAA, using a more sophisticated model with higher resolution, that EPA is still under-predicting ozone background levels. How will you take into account the fact that even the NOAA model is likely to under predict true background levels due to model limitations? How will you consider these high ozone background levels in setting the standard?

As part of the ozone review, EPA will focus on the health effects evidence and related exposure and risk analyses in determining the appropriate level of the ozone standard, and will provide information on ozone background concentrations from multiple air quality models and discuss spatial and temporal variations in peak and mean concentration levels. Regarding the assertion that current air quality models are underestimating background concentrations, EPA’s analyses

have shown that model predictions estimate concentrations at remote sites with considerable accuracy, especially for seasonal averages compared to individual days.

Are you planning on estimating and counting ozone benefits down to zero ozone levels?

EPA does include benefits below the standard using a methodology that is consistent with the best available science. The primary NAAQS is set at a level requisite to protect public health with an adequate margin of safety – and should be neither more nor less stringent than necessary to do so. The NAAQS is not set at a zero risk level. In setting the NAAQS, EPA takes into account health effects experienced by the general population and at-risk groups (like asthmatics, children, and the elderly). While there is lower confidence in estimates of benefits of reductions in exposure occurring at very low ozone levels, the risk assessment for the current ozone NAAQS review provides estimates of total risk from exposure to ozone concentrations well below the standard and also provides information about how much of total risk occurs on days with different ozone concentrations.

How would you count benefits from reductions in exposure that occur far below the level you consider as safe?

EPA's approach to estimating the benefits of reducing ozone pollution is consistent with the best available science. The primary NAAQS is set at a level requisite to protect public health with an adequate margin of safety – and should be neither more nor less stringent than necessary to do so. The NAAQS is not set at a zero risk level. In setting the NAAQS, EPA takes into account health effects experienced by the general population and at-risk groups (like asthmatics, children, and the elderly). While there is lower confidence in estimates of benefits of reductions in exposure occurring at very low ozone levels, the epidemiological evidence suggests a generally linear response with no indication of a threshold. To reflect this, the risk assessment for the current ozone NAAQS review provides estimates of total risk from exposure to ozone concentrations well below the standard. The risk assessment also provides information about how much of total risk occurs on days with different ozone concentrations.

Navajo Generating Station:

Recently, EPA proposed a regional haze federal implementation plan for NGS that would require the installation of the most expensive emissions-control technology. The proposal is currently open for public comment, and EPA indicated that it will hold public hearings to accept oral and written comments on the proposed rulemaking. Can you give assurances that, if you are confirmed, EPA will host public hearings that allow meaningfully public participation, including at least one hearing apiece in northern Arizona, central Arizona, and southern Arizona, as well as conduct meaningful outreach and consultation with all affected Native American communities?

Yes. EPA has recently invited every tribe in Arizona, including the Navajo Nation, to formal tribal consultation in Phoenix on April 29, 2013. EPA is also available to hold additional consultation with tribes. In addition, EPA intends to hold public hearings this summer in Page, Phoenix, and Tucson AZ as well as a location on the Navajo Nation and a location on or near the Hopi Tribe.

If confirmed, will you commit to identifying an NGS solution that upholds federal trust obligations to Native American communities, supports sustainable water policy, does not impose significant

additional costs on struggling Arizonans, and does not require an appropriation or otherwise add to the national debt?

EPA is committed to working with the Department of the Interior and the Department of Energy, our federal partners in the Joint Interagency Working Group on Navajo Generating Station, to find a long-term path forward for NGS that meets the needs to the wide variety of stakeholders involved in this issue. DOI, DOE, and EPA will work together to support Arizona and tribal stakeholders' interests in aligning energy infrastructure investments made by the Federal and private owners of the NGS (such as upgrades that may be needed for NGS to comply with Clean Air Act emission requirements) with long term goals of producing clean, affordable and reliable power, affordable and sustainable water supplies, and sustainable economic development, while minimizing negative impacts on those who currently obtain significant benefits from NGS, including tribal nations.

EPA's proposal did not include cost estimates for baghouses. Can you confirm that the NGS owners would not be required to install baghouses as a result of the change in emissions created by installing SCRs?

EPA's proposed BART determination and BART alternatives do not require the installation of baghouses at NGS. The alternative timeframes for meeting BART limits could extend roughly a decade or more into the future and EPA cannot determine now what a future permit many years down the road might require. However, we note that permitting of SCR on a similar facility in Arizona, the Coronado Generating Station, did not require the installation of a new baghouse.

Re: NHSM rulemaking, Can you tell us what the proposed rule will be completed? Will you keep the committee apprised of the process?

Response: The Agency committed to issuing the Nonhazardous Secondary Materials (NHSM) categorical listing rule in a timely manner. I understand that, recently, the Agency received important new information from industry that will inform the rulemaking. If confirmed, I am committed to keeping the Committee apprised of ongoing NHSM rulemaking efforts.

A federal court in the case of NMA v. Jackson recently struck down several EPA actions – specifically, EPA's Enhanced Coordination Process (ECP) and Multi-Criteria Integrated Resource Assessment (MCIR) for Appalachia surface coal mining, as well as EPA's guidance document, "Improving EPA Review of Appalachian Surface Coal Mining Operations Under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order" – as violating the CWA and Administrative Procedure Act, as well as, in the case of the guidance document, the Surface Mining Control and Reclamation Act. What steps has EPA taken to implement the court's decision?

Response: I appreciate your interest in this important matter. Although the agency's appeal of the District Court's decision is pending, I understand that the Agency has directed its field offices not to use

the guidance documents affected by the court decision and instead to rely on regulations promulgated under the APA.

NSPS (Existing)

In December of last year the NRDC released a report calling on EPA to use Section 111(d) of the Clean Air Act to establish a new greenhouse gas program for existing power plants. Have any officials from your office, or elsewhere in EPA that you are aware of, met with NRDC to discuss their proposal?

A representative of NRDC asked for, and was granted, the opportunity to present the organization's proposal to senior management and staff in the Office of Air and Radiation.

Can you assure us that EPA will not adopt a cap and trade program?

Both former Administrator Jackson and I have said in the past that the EPA has no intention of pursuing a cap and trade program for greenhouse gases and I continue to stand by those statements.

Can you assure us that EPA will adopt a program that will not force new retirements of coal units?

I do not foresee the EPA adopting an NSPS program that would mandate the retirement of coal units.

Do you believe that EPA has the authority under the current language of the Clean Air Act to establish a new climate change program for existing power plants, such as the one called for by the NRDC? If so, what analyses has EPA conducted regarding the practicality or legality of using Section 111(d) of the Clean Air Act to regulate existing power plants?

Section 111(d) of the Clean Air Act (CAA) provides authority to regulate existing sources where EPA establishes a new source performance standard (NSPS) under section 111(b) for a certain pollutants. EPA has not developed an analysis of whether section 111(d) provides the authority to adopt the program proposed by NRDC.

What plans does EPA have to adopt new GHG regulations for existing power plants? Specifically, has your office prepared draft regulations, what regulatory options are you considering, and what is the likely timeline for such action?

EPA is not currently developing any existing source GHG regulations for power plants. Accordingly, the Office of Air and Radiation has not prepared draft regulations. The office's current work is focused on reviewing the comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b).

Once EPA finalizes its proposed NSPS for GHG Emissions for New Stationary Sources: Electric Generating Units (EGUs), does the agency intend to propose regulations under Section 111(d) of the Clean Air Act to establish procedures whereby states set standards of performance for GHG emissions from existing EGUs in their jurisdiction? If so, does EPA agree that it can only issue guidance to the

states on regulating GHG emissions from power plants and that each state must submit a plan to the agency that sets standards for performance for existing power plants within the state? Will EPA discuss its plans for the guidance with states prior to issuing such guidance?

EPA is not currently developing any existing source GHG regulations for power plants. As a general matter, the provisions of section 111(d)(1) are plain on their face to the extent that they require EPA to “prescribe regulations which shall establish a procedure ... under which each State shall submit ... a plan which ... establishes standards of performance for any existing source” In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency will ensure, as it always seeks to do, ample opportunity for the public and stakeholders to offer meaningful input on potential approaches.

Does EPA believe it has the legal authority to impose a cap and trade mechanism in place under Section 111(d) of the Clean Air Act to reduce GHG emissions from existing power plants? If so, can you please explain how the agency could do so? Please provide citations to any relevant statutes, regulations, or case law in your explanation.

I am aware that in connection with the Clean Air Mercury Rule, issued under the prior Administration, EPA took the position that section 111(d) obligations could be met through a cap-and-trade program.

NSPS (new)

Using the logic in the draft NSPS to create a category for “fossil fuel-fired EGUs,” why did EPA stop at including just coal and natural gas units? If you’re going to combine power generators into one category, why not extend the proposal to its logical conclusion and include nuclear units? If we did that, what would the practical result be?

CAA section 111(b) requires EPA to list categories of stationary sources that cause or contribute significantly to air pollution anticipated to endanger public health or welfare. When EPA listed fossil fuel-fired electric generating units in the 1970s, those decisions were based specifically on findings with respect to the emissions from combustion of fossil fuels. Other types of electricity generation that do not rely at least in part on fossil fuel combustion, such as nuclear and solar power generation that have not been listed under 111(b) and thus were not included in this source category.

Why did EPA choose to exempt simple-cycle natural gas turbines from the proposed rule?

In the preamble to the proposed new source carbon pollution standard for power plants, the EPA laid out its rationale for not including simple-cycle natural gas turbines in the proposal. Commenters also raised this issue and the agency, of course, will address the matter further in the final rule.

How can EPA justify calling a NGCC turbine the Best System of Emissions Reduction (BSER) for a coal-fueled unit? Has such a BSER determination – that BSER for a specific unit would be to not exist as that type of unit – ever been made in the past?

The preamble set out the extent to which EPA had the latitude under 111(b) and applicable regulations to propose a particular system of emission reduction as the BSER for different types of fossil fuel generating units that have the same function of generating electricity, as well as its rationale for that proposal. EPA has made a comparable BSER determination in the past. See "Standards of Performance for New Stationary Sources, Primary Copper, Zinc, and Lead Smelters," 41 Fed. Reg. 2,332, 2,333 (Jan. 15, 1976) (establishing a single standard for different types of furnaces in primary copper smelters). In addition, the D.C. Circuit recently upheld a similar action EPA took under CAA section 112 in a rulemaking for processing plywood and composite wood products (PCWP). There, EPA adopted a single standard for multiple production methods. The Court noted that in the rulemaking, EPA subcategorized PCWP equipment "according to its function." *NRDC v. EPA*, 489 F.3d 1364, 1375 (D.C. Cir. 2007) (citing 69 Fed. Reg. at 45,948). The agency received comments on this set of issues and is evaluating them carefully and will take them fully into account before issuing a final rule.

Is CCS considered BSER for coal plants? Assuming CCS was BSER, would it apply to all fossil-fueled plants – both coal and gas?

In the NSPS proposal, EPA proposed that natural gas-fired combined cycle technology represented BSER for intermediate and base-load fossil fuel-fired power plants. We did not make a separate determination as to what represented BSER for coal-fired power plants alone. EPA received many comments on this proposed determination and is considering them.

Last August you stated: “My job is primarily to implement the Clean Air Act. Our Clean Air Act is prescriptive, but it does allow flexibility. It looks at variability in technology and design. It is not a law that picks winners and losers.” However, your department just issued a draft New Source Performance Standard (NSPS) that limits carbon dioxide emissions for new power plants to 1,000 pounds per MW and, if we exclude all of the wind and solar, essentially requires all new power plants to be fueled with natural gas. Do you believe that EPA should use the “flexibility” that you referenced in the Clean Air Act to determine what fuels can and cannot be used to power, heat and cool our homes, businesses and manufacturing facilities? What about transportation fuels?

The proposed carbon pollution standard is a fuel neutral emission rate, which can be met by natural gas fired plants or coal- or petroleum-coke fired plants using carbon capture and sequestration. With respect to transportation fuels, the Agency is committed to carrying out the obligations established by Congress for the EPA under the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007 and the Clean Air Act.

EPA has specifically exempted both modified (units that make major changes) and transitional (units that have yet to begin construction but have already secured a Prevention of Significant Deterioration (PSD) operating permit) from adhering to the proposed standard. EPA has stated that it does not intend to issue a standard for modified units. What will the Agency do if sued by environmental groups on this issue? Is it possible that such a lawsuit might result in the application of the new standard to all facilities that are being forced to install major upgrades to comply with other EPA regulations, such as the Mercury and Air Toxics Standards (MATS)?

I believe that the approach we proposed to take with respect to modified sources is sound. Beyond that I believe that it would be neither appropriate nor useful for me to speculate on potential litigation and possible judicial decisions that at this point are entirely hypothetical.

Do you agree that the current proposed standard is completely infeasible for modified power plants?

The main reason that EPA declined to propose a standard for modifications was that the agency concluded that it lacked sufficient information to propose such a standard.

On March 27, 2012, EPA proposed a rule that would set a limit on the amount of carbon dioxide that new power plants could emit. In this proposal, EPA recognized that coal-fired power plants will not be able to meet this limit unless they install carbon capture and storage – a technology that EPA admits is not commercially available and, according to EPA, would almost double the cost of building a new coal-fired power plant. Do you agree that this rule, if finalized as proposed, will effectively ban new coal-fired power plants in the U.S.?

As EPA explained in the preamble to the proposed carbon pollution standard for new power plants, it was not the agency's intent to propose a rule that resulted in a de facto ban on the building of new coal-fired power plants nor does EPA believe that would be the effect of the proposed rule. The proposal reflected, instead, EPA's analysis and understanding of new electricity generation capacity expected to be built in the foreseeable future. Further, the proposal offered for comment an alternative compliance pathway for new coal-fired generation that included substantial flexibility for new coal-fired facilities. Finally, commenters raised this and related issues regarding the impact of the proposed standard on prospective coal-fired sources and the agency is still in the process of evaluating those comments, which it will consider and take fully into account in issuing a final rule.

When you proposed the NSPS for new powerplants, you acknowledged that it would not be equitable to apply the new standard to plants that have already been under development for many years and have already obtained their air permits. As I understand it, you recognized that these plants will not be able to meet the new standards and you didn't want to pull the rug out from under companies who have already spent a lot of time and money to develop new plants based on EPA's long-standing rules. Is this the basic reasoning behind EPA's proposal for dealing with "transitional sources"?

In the preamble to the proposed carbon pollution standards, EPA laid out its reasoning in proposing an approach to "transitional" sources. EPA emphasized that sources could qualify as "transitional sources" only if they were on the verge of commencing construction in addition to having obtained their PSD permits.

EPA also said that transitional sources had to officially "commence construction" by April of this year, or they would lose their status as "transitional sources." In other words, they would be required to meet a standard that EPA has said they can't meet. Can you explain why this deadline was chosen?

As stated in related answers, EPA laid out in detail its reasoning for the approach it proposed to take with respect to "transitional" sources, including the proposal for a one-year time line. EPA included the one-year period because sources on the verge of commencing construction could reasonably be expected to do so within one year. Commenters raised this and related issues regarding "transitional" sources and the agency is still in the process of evaluating those comments, which it will consider and take fully into account in issuing a final rule.

There is a power plant that has been proposed for western Kansas known as Holcomb 2. Two rural co-ops have been developing this plant for more than 6 years and have already invested almost \$90 million dollars to develop a plant that they believe is in the best interests of their members. They have obtained all the necessary permits, but their air permit has now been challenged to the Kansas

Supreme Court. When EPA finishes the NSPS for new power plants, will you treat plants like Holcomb 2 fairly? Will you commit to issuing a rule that will allow them to move forward with their project after getting a decision from the Kansas Supreme Court?

EPA included an explicit reference to Holcomb 2 as a potential transitional source under the proposal. The Agency has received comments and additional information with respect to this project and is carefully evaluating those comments, which it will consider and take fully into account in issuing the final rule.

EPA's April 2012 proposed New Source Performance Standards (NSPS) for Greenhouse Gas Emissions for New Stationary Sources: Electric Generating Units (EGUs) sets a standard of performance based on a single fuel – natural gas. This proposed standard cannot be achieved in practice for any source except natural gas combined cycle (NGCC) units. Can you please explain to the committee how setting a standard for all fuel types based on a single one does not violate the definition of "standard of performance" in Section 111(a)(1) of the Clean Air Act?

In the preamble and the supporting documents for the proposal, EPA explained its reasoning for proposing a single standard of performance for the fossil fuel-fired category. As noted in the answer to question 194, there are precedents for this type of action. At the same time, the proposal included an alternative compliance pathway for new coal-fired facilities. The public provided comment on these issues; the Agency is currently evaluating those comments and will take full account of them before issuing a final rule.

Given the price variation in electricity produced from natural gas in New England in the winter of 2013, does EPA still believe that the price of electricity from natural gas-fired generation will remain almost the same as it is today until 2035, as the proposed New Source Performance Standards (NSPS) for Greenhouse Gas (GHG) Emissions for New Stationary Sources: Electric Generating Units (EGUs) projects? If so, could you please provide the committee with a written explanation of EPA's rationale for such a projection? If you do not believe the price in 2035 will remain close to what it is today, will EPA address this changed assumption about electricity prices from natural gas in final NSPS for GHG emissions from new power plants?

As part of the rulemaking package for the proposal EPA included economic analyses that addressed, among a set of related economic issues, projections of future electricity prices. That analysis acknowledged the historic volatility in natural gas markets, including seasonal shifts in response to weather, and also examined the potential impacts of the proposed standard under a range of natural gas prices. EPA also plans to include updated economic analysis addressing these issues in support of a final rule.

EPA states that there are no costs and, concurrently, no benefits associated with the proposed rulemaking to regulate greenhouse gases from new sources. What analysis did EPA undertake to determine that there are no costs or benefits from the proposed rule?

In the preamble and supporting documents for the proposal, EPA provided an extensive discussion of this analysis of costs and benefits that was undertaken to address this question.

Why did EPA only analyze out until the year 2020 in order to determine the lack of costs and benefits?

Because the Clean Air Act requires that the NSPS be reviewed every eight years, this economic analysis focuses on benefits and costs of this proposal for the years through 2020. Although

2020 is the primary focus of proposed rule, EPA did perform economic modeling out to 2030. The analysis helps confirm the conclusions are consistent even beyond 2020.

A recent comprehensive modeling effort done by ICF International – using the same proprietary ICF Integrated Planning Model with EPA uses to model each of its rules – project forecasts about 50 GW of coal-fired generation retirements over the next few years, driven mostly by pending EPA rules, with the expectation of another 20 GW of retirements after that. How can you explain the difference between this analysis and EPA’s?

A number of economic factors influencing retirements well beyond EPA’s clean air rules are included in these ICF figures. **Error! Bookmark not defined.** External analysts, including GAO^{xv}, CRS^{xvi}, the Bipartisan Policy Center^{xvii}, and Analysis Group^{xviii}, have found that decisions to retire some of the country’s oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA’s power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA’s analyses are not comparable to other assessments that also take into account broader economic factors.

When you served as commissioner of the Connecticut Department of Environmental Protection you expressed concerns that some state policies would cause businesses to leave Connecticut for other states more favorable to business development. Tell us if you share the same concern about EPA acting much the same way on a national level – driving energy and manufacturing companies out of the United States due to stringent, overly burdensome environmental rules.

In the past 40 years, we have made dramatic progress reducing pollution in our air, land and water. That progress has gone hand in hand with long-term economic growth and prosperity. I strongly believe that we can continue to build on this success through smart, pragmatic regulatory and non-regulatory actions that achieve further progress in protecting public health in the environment, while supporting continued economic growth.

The Administration has continuously made the case that new regulations add jobs given the need for more investments for environmental controls. However, a DOE report from only a few years ago says that the compounded burden of various regulations contributed to 66 refineries closing in the last 20 years; they even have a chart that overlays new regulations with refinery closures. If new regulations add jobs, why does DOE say it has led to closed manufacturing facilities?

Your question appears to refer to DOE’s 2011 study assessing whether the congressionally mandated renewable fuel standard program would impose a disproportionate economic hardship on small refineries, such that these refineries should receive an exemption under that program. My staff informs me that while this study assessed the potential need for extending relief from the RFS program for small refineries, it did not analyze the impacts of any other EPA

^{xv} Government Accountability Office – “EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges” <http://www.gao.gov/assets/600/592542.pdf>

^{xvi} Congressional Research Service – “EPA’s Regulation of Coal-Fired Power: Is a “Train Wreck” Coming?” http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pdf

^{xvii} Bipartisan Policy Center – “Environmental Regulation and Electric System Reliability” <http://bipartisanpolicy.org/library/report/environmental-regulation-and-electric-system-reliability>

^{xviii} Analysis Group – “Why Coal Plants Retire” http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/2012_Tierney_WhyCoalPlantsRetire.pdf

regulations or reach the conclusion reflected in your question. Rather, refinery closures over the past three decades have been driven primarily by market factors unrelated to environmental regulation

Like many of my colleagues, I am concerned by the recent onslaught of proposed EPA regulations and the chilling effect they are having on the economy. Many businesses are sitting on the sidelines and are unwilling to make major investments in this uncertain and unpredictable environment. What steps will you take to ensure businesses have a more stable and predictable regulatory environment?

I understand the importance of regulatory certainty to the business community. As I stated in my testimony, I have done my best to keep my door open to businesses, environmental advocates, local communities, the states, tribes, labor and the public at large, and I will continue to do so if I am confirmed as EPA Administrator. Interactions with stakeholders has provided information and insights that have led to the development of smarter, more cost-effective rules, and better designed and implemented policies and programs to build partnerships and enhance collaboration. If confirmed, I hope to continue to build on this record of outreach and engagement.

EPA's proposed rule would impose expensive new study, monitoring, and retrofit requirements on all existing facilities, including "baseload" facilities that are the foundation of our electric system and "peaking" facilities that are used more sparingly to meet periods of peak electricity use. But the peaking units may be used for as little as a few days a year when electricity demand is high, and it would be uneconomic to spend a great deal on money on them for studies and equipment that would be rarely used and would not provide commensurate environmental benefit. In an earlier version of the rule, EPA provided an exemption for such units. Yet in the current proposed rule, which is soon to be finalized, EPA eliminated the exemption. Would you consider reinstating that exemption or providing equivalent relief from the rule's requirements for peaking facilities so they can continue to perform their crucial reliability function?

Response: As you know, I have worked hard to make sure that we carefully monitor the design and implementation of EPA's air pollution rules to keep costs reasonable and ensure that the reliability of our electrical system is protected. If confirmed, I look forward to working to ensure that requirements and implementation of rules like 316(b) are similarly sensitive to electrical reliability issues.

EPA's proposed rule outlines a rigid schedule of expensive and time consuming studies that are required as an interim measure before a plant installs technology to comply with the rule's requirements. It is also my understanding that this set of interim measures would apply to facilities even if they announce they plan to retire prior to compliance deadlines. Why would we subject existing facilities to additional and unnecessary expenses if, in fact, they have announced retirement and ultimately would not be expect to comply with the rule because they no longer would be in operation? Will you ensure the final rule provides compliance relief for generation assets that announce retirement?

Response: I fully recognize that this is a period of transition for the power sector and that operators do not want to undertake studies for control technologies if they are certain to retire a unit. If confirmed, I look forward to working to ensure that we carefully consider the special circumstances of retiring units as we finalize the 316(b) rule.

There is currently a project under review by EPA in Arecibo, Puerto Rico that is experiencing a lengthy delay in obtaining a permit under the Clean Air Act. I understand that this state-of-the-art waste to energy facility meets your Agency's most stringent air emissions standards and will help to alleviate Puerto Rico's landfill emissions problem that has created so many health challenges for that island's population. The delay in permitting this facility is even stranger considering your Agency permitted a nearly identical facility in Baltimore in August 2010. That permit process, from application to final order, took only 15 months. In the present case, the permit process has extended well over 2 years and we still have not seen action. Can you explain this situation?

Response: I understand that there has been wide public interest in the proposed permit for the Energy Answers waste to energy facility. Since first proposing the permit in May 2012, the EPA held six public hearings in Arecibo, Puerto Rico. The agency extended its public comment period and ultimately reviewed over 3,000 public comments on the proposed permit. The EPA is carefully considering all comments and is preparing detailed responses to the comments.

Ms. McCarthy, your Agency is well past its statutory deadline for issuing the permit. Your delay is preventing the island of Puerto Rico from reducing greenhouse gas emissions by over 1 million tons per year, as well as creating green technology jobs for that struggling economy. Please give me a date certain when I can expect to see that permit signed.

Response: As noted above, it is my understanding that the EPA has not completed the review of public comments received on the proposed permit for the for the Energy Answers waste to energy facility. The agency is making every effort to ensure a thorough and comprehensive review prior to taking final action on the air permit.

Congress has been informed that there is no process whereby all of the petitions for rulemaking or reconsideration may be available to the public. Recent EPA testimony indicates that at any given time the Administrator does not know what or how many petitions have been filed. Will you promise to establish a system for keeping better track of this correspondence?

Response: If confirmed, I will seek ways to further transparency, and I will learn more about the agency's current systems for tracking these types of documents agency-wide.

In this era of unsustainable federal government budget deficits, if you are confirmed, will you commit to review thoroughly the current status of the perchlorate rulemaking and determine whether regulating perchlorate under the SDWA is a rational and reasonable use of the Agency's limited resources?

If you determine that regulating perchlorate under the SDWA is a rational and reasonable use of the Agency's limited resources will you provide me with an explanation of other EPA priorities that will need to be delayed or abandoned in order to finalize the perchlorate MCL?

If you determine to forge ahead with the perchlorate MCL, will you provide me with a detailed analysis of the costs that will be imposed on private and public drinking water purveyors by that MCL?

Response (to the three questions above): It is imperative that the Agency use the best available science to guide its decision making on Perchlorate and other contaminants. If I'm confirmed, I commit to looking at the science, as well as the requirements of the Safe Drinking Water Act and I will ensure that EPA follows the science and the law.

The manufacturing sector is seeing considerable new investment in new and modified facilities, and the prospect of maintaining and creating thousands of jobs, thanks in part to enhanced production of unconventional oil and gas (e.g., shale gas). Under the Clean Air Act, EPA is required to issue a Prevention of Significant Deterioration (PSD) permit within one year of deeming the permit application "complete." What has your office done to ensure these permits are issued in a timely manner to prevent permits from slowing recovery and growth in the manufacturing sector?

In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issued permits, which will help avoid delays in issuing permits.

What will you do to ensure PSD permits are timely, especially considering that NAAQS requirements are constantly changing?

In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issued permits,

which will help avoid delays in issuing permits. EPA will consider adopting similar provisions as warranted whenever the agency changes NAAQS requirements.

How will you ensure that, given the EPA and states' budgetary pressures, facilities are able to get permits and begin operating as soon as possible? Do you expect to develop or modify guidance to State permitting offices?

In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM_{2.5} NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issue permits, which will help avoid delays in issuing permits.

In an April 10, 2013 response to a January 23, 2013 letter from Senator Vitter regarding EPA compliance with the Regulatory Flexibility Act (RFA), EPA said that it takes its responsibility to comply with the RFA "very seriously." However, while EPA used to post its regulatory agendas on the EPA website, the agency stopped after 2011 (See <http://www.epa.gov/lawsregs/regulations/regagenda.html#background>). Please explain why EPA stopped posting its regulatory agendas on its website. Does EPA plan to post its regulatory agendas on its website in the future?

Response: I believe that government should be transparent and open. If confirmed, I will ensure that the public has access to EPA's regulatory agenda, either through its website, or through regulations.gov.

In a January 23, 2013 letter, Senator Vitter asked EPA to explain its plan for satisfying its legal obligations under the Regulatory Flexibility Act (RFA) since its regulatory flexibility agenda was an unprecedented 8 months past the statutory April deadline. In its April 10, 2013 response, EPA ignored this question and simply said that it takes its responsibility to comply with the RFA "very seriously," yet EPA did not published its regulatory flexibility agenda in the Federal Register until January 8, 2013. Is it EPA's position that a January 8, 2013 publication of its regulatory flexibility agenda complies with the statutory requirements of 5 U.S.C. § 602 ("During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda.")?

Response: I believe that the Agency should be sensitive to the needs of small business as it implements its regulatory agenda. If confirmed, I will ensure that the Agency meets its statutory deadlines for publishing the regulatory flexibility agenda.

Regarding cellulosic volumes, each year since 2010 EPA has taken EIA's projections about projected cellulosic biofuel production and increased it for the purpose of setting the following year's mandate. Each year, EIA has been wrong, and EPA has been more wrong, leading the U.S. Court of Appeals for the DC Circuit to vacate the 2012 cellulosic mandate. EPA is expected to voluntarily rescind the 2011 mandate. Yet the week after the Court decision, EPA proposed an *increase* in the cellulosic mandate despite the fact that only 1,000 gallons of the 10.45 million ethanol-equivalent gallons mandate was produced for compliance in 2012. The EPA's Moderated Transaction System (EMTS) shows no cellulosic production *again* in January, 2013. Given the Court's admonition and the data we now have, will EPA reduce the cellulosic mandate to zero when it finally promulgates final volumes for 2013, which are now 4 months late?

EPA is required under the CAA to annually set the standard for cellulosic biofuel at the projected volume of cellulosic biofuel production, which EPA determines based on projections from the EIA and considering other available information. In February 2013, EPA released a proposal that projected the volume of cellulosic biofuel production for 2013 at 14 million gallons, which is below the statutory volume of 1 billion gallons. EPA's proposed projection for cellulosic biofuel production is consistent with the DC Circuit's direction and is based on a neutral assessment of reasonably anticipated production for 2013. The agency will fully consider comments on the proposed cellulosic level before finalizing the standard, and will make adjustments to the proposed levels, if appropriate.

The last administrator clearly took on the role of promoting the ethanol industry. Do you believe your role as administrator is promote one industry over others, or that decisions should be made that consider the protection of the environment and the economy?

EPA implements conventional and renewable fuels and fuel additives regulations and programs as required under the CAA. EPA does not promote any specific industry.

Given the multitude of problems from the implementation of Renewable Fuels Standard (RFS), including the issue of the "blend wall," where the amount of ethanol required to be blended into gasoline exceeds the E10 threshold, is it now time to admit that the RFS is a broken program and is need of significant revisions?

Congress mandated that increasing amounts of renewable fuel be used nationwide, while providing industry with flexibility to determine the most cost-effective fuel mix needed to meet the requirements of the law. EPA has met with representatives of a broad array of stakeholders from the oil and renewable fuels industries, and we are working with the Department of Agriculture and the Department of Energy to discuss the E10 blendwall and other issues related to RFS implementation. EPA will take this information into consideration as the agency moves forward with implementation of the program.

In your role as administrator will you have the flexibility to address the longer term issues of the Renewable Fuel Standard? What do you plan to do to address the immediate problems?

EPA is looking at the potential impacts of the blendwall and related RFS implementation issues over the near and longer term. The agency is also reviewing comments submitted in response to the proposed rulemaking for the 2013 RFS volume standards, and will carefully consider this input in setting future RFS standards. Going forward, EPA will consider whether any further actions under the directives and authorities provided by Congress are appropriate to help ensure orderly implementation of the program. Given the importance of these issues, however, EPA recognizes that it is important to avoid precipitous action that could have adverse effects on the market.

EPA has not yet promulgated the renewable fuel obligations for 2013 for the Renewable Fuel Standard. What action will the Agency take soon to address this problem? Obviously, 2013 has already begun. Will this rule be retroactive as of January 1, 2013? Will EPA get back on schedule and finalize values for 2014 before December 31, 2013?

The public comment period recently closed for the 2013 volume standards. EPA intends to finalize the 2013 standards by the summer of 2013, and intends to propose the 2014 standards in the same time frame.

Do you agree that it is within EPA's legal authority to waive or modify the renewable fuel volume requirements of the RFS if meeting such requirements will cause severe harm to the Nation's economy? Do you think that rising consumer prices constitute the potential for severe economic harm? As Administrator, would you consider waiving or modifying the renewable volume requirements to avoid or mitigate higher gas prices on our Nation's working families?

Congress established a stringent test for granting a waiver under the RFS program. Section 211(o)(7) of the Clean Air Act allows the EPA Administrator, in consultation with the Secretaries of Agriculture and Energy, to waive the requirements of the RFS under certain criteria. The waiver could be issued if the Administrator determines – after a notice and comment period – that implementation of the RFS requirements would severely harm the economy or environment of a State, a region, or the United States. That is a very fact-specific determination, and therefore would be best addressed in the context of a specific request after considering public comments.

EPA is proud of its “global leadership” role. EPA also takes the view that it is the aggregate effects of chemicals and emissions that really matter. Has EPA taken an aggregate, global approach in analyzing the impacts of its ethanol programs? I know you’ve analyzed national effects, but have you looked at global effects as well?

EPA has analyzed the impacts of the Renewable Fuel Standard (RFS) program in a number of different regulatory actions. For example, EPA issued a regulatory impact analysis (RIA) for the March 26, 2010 RFS final rule, which implemented the requirements of the Energy Independence and Security Act (EISA) of 2007. That RIA provided a detailed assessment of a wide variety of key impacts from the RFS program. EPA's analysis addressed impacts of EISA's requirements both on U.S. food prices and global food consumption, and contains explicit information about the assumptions and limitation of the data used to support the analyses. In

addition, in evaluating whether a fuel meets the greenhouse gas reductions for the RFS program EPA conducts a lifecycle analysis of greenhouse gas emissions that includes both domestic and global impacts.

EPA states, in regard to its RFS mandates, that “the quantity of food brought to market might decrease, resulting in higher food prices and possibly more malnutrition”. If these higher prices and increased levels of malnutrition were shown to actually cause deaths, how serious an issue would that be, in your view?

Protecting public health is central to EPA’s mission, and we therefore would consider such issues very seriously.

What is your response to recent studies, such as that by Dr. Indur Goklany in 2011, which finds that the higher food prices resulting from ethanol diversion might be responsible for as much as 192,000 deaths annually?

EPA is aware of the Goklany study and other analysis that look at global biofuels policies and their impacts. In the RIA for the March 26, 2010 RFS final rule, EPA analyzed the impacts of EISA’s requirements on food prices and global food production.

Studies have been made that show that the increase of food prices due to ethanol policy have increased hunger in countries such as Guatemala and Mexico, causing violent protests in Yemen, Haiti, Egypt, Pakistan, Indonesia and Ivory Coast, and could possibly create 42 million new poor people in India. What is your response to these studies, taking into account that the U.S. alone is responsible for approximately 62 percent of the world’s biofuel production?

EPA is aware of studies such as the type referenced, but the agency has not reviewed the specific studies referenced in a level of detail sufficient to enable us to comment on them at this point. In the RIA for the March 26, 2010 RFS final rule, EPA analyzed the impacts of EISA’s requirements on food prices and global food production.

Last year, the EPA denied petitions from seven governors to suspend RFS blending requirements. The governors contended that by diverting 40% of the U.S. corn crop to ethanol production, the RFS combined with the worst drought in 50 years drove corn prices to record heights, imposing severe hardship on poultry, beef, and pork producers in their states. Citing Section 211(o)(7) of the Clean Air Act, the EPA argued that to grant a waiver it must “determine that the implementation of the mandate itself would severely harm the economy; it is not enough to determine that implementation of RFS would contribute to such harm.” But job losses, declining sales, bankruptcies, plant closures, and the like often have more than one cause. An RFS that does no harm when corn production and corn stocks are high and global demand is low might do considerable harm when the opposite conditions prevail, as they did in 2012. By insisting that the RFS “itself” must be responsible for severe harm, the EPA’s denial of the petitions was disconcerting. If severe harm is occurring and the RFS contributes to it, what language in the statute prohibits the EPA from taking action?

In responding to the petitions, EPA consulted with the U.S. Department of Agriculture and the U.S. Department of Energy, and examined a wide variety of evidence, including modeling of the impact that a waiver would have on ethanol use, corn prices, and food prices. The agency also looked at empirical evidence, such as the current price for renewable fuel credits, called RINs, which are used to demonstrate compliance with the RFS mandate. EPA’s analysis showed that it

is highly unlikely that waiving the RFS volume requirements would have a significant impact on ethanol production or use in the relevant time frame that a waiver could apply (the 2012-2013 corn marketing season) and therefore little or no impact on corn, food, or fuel prices. This was because the modeling showed that in almost all scenarios modeled the market would demand more ethanol than the RFS would require. While EPA recognized that many parties had raised issues of significant concern to them and to others in the nation regarding the role of renewable fuels and the RFS program and the severity of the drought and its major impacts on multiple sectors across the country, the issue directly before the Agency was limited given EPA's authority under section 211(o)(7)(A) of the Act. EPA applied the detailed analysis to the statutory criteria for a waiver. EPA found that the evidence did not support a determination that the criteria for a waiver had been met, and therefore was required by law to deny the waiver.

In October of 2011, two organizations, one of them an anti-hunger group, petitioned EPA to acknowledge the deadly side-effects of its ethanol-fuel programs. EPA took over a year—14 months, to be exact, to deny that petition. In contrast, the White House has a “We Can’t Wait” series of policy initiatives that stress the need for urgent action. Why is that, on this issue of life-and-death, EPA obviously could wait? This was a data quality petition, and your own data quality regulations provide for a 90-day response time. What took so long?

EPA received a request for correction under the Information Quality Guidelines from the Competitive Enterprise Institute and ActionAid USA on October 13, 2011, and responded to that request in a letter dated December 13, 2012. Subsequently, EPA has received a request for reconsideration from the same two organizations. EPA acknowledges the length of time it required to respond to the October 13, 2011 letter and is currently in the process of responding to the request for reconsideration, on which the agency hopes to move more quickly.

A recent study conducted by NERA Economic Consulting, the same firm engaged by DOE for analysis of LNG exports, found that the current RFS mandates could lead to a 30% increase in consumer gas prices by 2015. NERA also found that the RFS mandates could result in a \$580 billion decrease in take-home pay for working families. In your role as EPA Administrator, what steps do you intend to take to prevent these adverse impacts on our Nation’s economy and working families?

The Agency has seen several analyses focusing on the potential impacts of the RFS program on retail gasoline prices. Some of these show minimal or indiscernible price impacts. The agency is carefully monitoring market dynamics. EPA has met with representatives of a broad array of stakeholders from the oil and renewable fuels industries, and is working with the Department of Agriculture and the Department of Energy, to assess current market activity related to the implementation of the RFS. As EPA implements the RFS program, the agency will continue to closely evaluate the impacts of the program and to consider whether any further actions under the directives and authorities provided by Congress are appropriate to address any such impacts.

Almost all analysts agree that we have reached or will soon reach the “blend wall”—or the time when the volumes of renewable fuel required by the RFS require producers to exceed the 10% volume threshold. A recent study by NERA Economic Consulting stated that the blend wall will result in fewer available RINs available for purchase to comply with the RFS and lead to higher gasoline prices at the pump for working families. In recent weeks this analysis has been borne out as RIN prices have skyrocketed from \$.05 a RIN to over \$1 a RIN. Do you agree that it is within EPA’s legal authority to

release more RINs into the RFS market to reduce the impact of the blend wall on gas prices for consumers? As Administrator, would you favor doing so?

Only qualified registered renewable fuel producers are authorized to generate RINs. However, as we continue implementing the RFS program, EPA recognizes the need to closely evaluate the impacts of the program and consider its options under the authority of the Clean Air Act to address the E10 blendwall and other issues associated with implementation of the program.

Is it within EPA's legal authority to establish a "safety valve" as part of the RFS program whereby the EPA would cap/hold steady RIN prices based on their impact on the Nation's economy? As Administrator, would you consider establishing such a safety valve as part of the RFS?

The market sets the price of the RINs. However, as EPA continues implementing the RFS program, the agency recognizes the need to closely evaluate the impacts of the program and consider its options under the authority of the Clean Air Act to address adverse issues that may result from the program.

There appears to be increasing capability to calibrate dose-response mechanisms for many chemicals and naturally-occurring compounds, such that an exposure threshold can be established and that exposures below that threshold are safe. This is contrary to the methods EPA has routinely employed in risk assessments as the Agency continues to utilize a linear, no-threshold approach. Do you believe it is timely to revisit the Agency's risk assessment methodologies? Will you commit to requesting the NAS to undertake an appropriate revision to the Silver Book?

Response: I understand that sound science must be the basis for all of EPA's actions. If I'm confirmed, I commit to getting fully briefed on the issues that you raise.

Given tight budgets, shouldn't EPA be focusing its efforts on rulemakings mandated by a specific environmental statute?

Response: Tight budgets are requiring EPA to carefully assess how it prioritizes its actions and deployment of resources with a goal of maximizing its mission to protect human health and the environment in today's challenging context. Many factors, including which rulemakings are mandated by specific environmental statutes, are considered as part of determining the Agency's priority actions. If confirmed, I will ensure that EPA's process for establishing priorities is appropriate and prudent given the fiscal realities we face.

To understand the scientific underpinnings of conclusions provided in many of EPA's documents, the public has had to resort to using Freedom of Information Act requests or other approaches, to try to obtain scientific reviews, assessments, and rulemakings and other information and data that the EPA has relied upon, but which is not made readily available to the public. As use of these tools is time consuming and creates legal hurdles, the information has not been available in a timeframe that can

inform public review and public comment of these documents. As part of a commitment to transparency and openness, do you agree that the data and information which underlies the key scientific studies the agency relies upon in important scientific reviews, assessments, and rulemakings (e.g., National Ambient Air Quality Standards Integrated Science Assessments, IRIS Toxicological Review), should be available to the public? As Administrator, will you commit to making this information available in public dockets?

Response: As I said during the confirmation hearing, I agree with you that transparency should be a major priority for the Agency. If I'm confirmed, I will take steps to increase the availability of data, across the Agency.

EPA is currently involved in a scientific assessment of Selenium that will be used to propose a new national Selenium water quality criterion. EPA has stated that it intends to put out its proposed criteria for public comment this coming Fall. Under your leadership, what would EPA's strategy be for incorporating relevant scientific critiques and comments EPA receives into its final Selenium criteria?

Response: I share your interest in assuring that EPA's decisions regarding selenium are based consistently on the best available science that fairly and effectively takes into account technical critiques. If confirmed, I will work hard to make sure that any future agency decisions regarding selenium adhere to this principle. I understand that if and when the EPA proposes a revised proposed selenium criterion, that criterion would be available for public review and comment, and I commit to ensuring that the EPA reviews the technical comments it receives and makes appropriate revisions to ensure that any final criterion is of high quality.

How is EPA taking the site-specific nature of Selenium issues into account when developing the national standard?

Response: I share your interest in assuring that we consistently apply the highest scientific standards in the development of proposed national water quality criteria, including current efforts to revise the existing selenium criterion. If confirmed, I look forward to working with you to develop a national selenium criterion that the public can be confident satisfies these technical standards while retaining appropriate site-specific flexibility.

EPA is subject to a consent decree requiring it propose revised effluent guidelines for power plants by April 19. I have heard concerns expressed about the cost of the technologies being considered relative to the amount of pollutants removed. Cost effective regulations are important – especially to small utilities and those serving rural or economically disadvantaged communities. Why did EPA not

convene a formal small business advocacy review panel ahead of the pending proposed wastewater rules as required by the Small Business Regulatory Enforcement Fairness Act? Can you assure me that EPA has thoroughly evaluated the potential impacts on small utilities and that the proposed rule will not adversely affect small, member-owned cooperatives, especially those serving rural or economically disadvantaged communities?

Response: The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, requires EPA to convene a Small Business Advocacy Review (SBAR) Panel for proposed rules unless the agency can certify that a rule will not have a significant economic impact on a substantial number of small entities. I will look into the particulars of the above rule if confirmed.

The Definition of Solid Waste (DSW) rule was finalized in December 2008. The rule permits certain valuable secondary material streams that are beneficially reclaimed, such as spent catalysts and spent solvents, to be excluded from RCRA Subtitle C requirements. The reclamation process must be either (1) under the control of the generator of the materials, or (2) the materials may be transferred by the generator to another person or company for reclamation. The 2008 rule was challenged by the Sierra Club but the case was put in abeyance after EPA agreed in a settlement with the Sierra Club that it would reconsider parts of the rule. The reconsidered rule was proposed for comment in July 2011. In that rule EPA proposed to take away the transfer based exclusion and proposed numerous additional requirements and conditions on the recycling and reclamation of valuable secondary materials. The 2011 reconsidered proposed rule creates little to no incentive for parties to recycle or reclaim secondary materials. Even more problematic, EPA has requested comment on subjecting 32 regulatory exclusions or exemptions that have been in existence for decades and have become part of manufacturing operations, for example, the closed-loop recycling exclusion, to a new level of scrutiny, and additional recordkeeping and notification requirements. Do you think that EPA should increase incentives for reuse/recycling, since incentives for recycling not only divert hazardous wastes from landfills and incinerators, but also allow the manufacture of valuable products? Do you think that the increased burden of the proposed DSW rule will tend to drive wastes that are currently recycled to disposal, which directly conflicts with the foundation of RCRA—reduce waste through recycling? Will you commit to reexamine the rule to ensure that it is based on sound scientific data, that it will decrease the burden of facility waste management and increase incentives to recycle materials to recover valuable waste streams?

Response: As a former state environmental agency commissioner, I know the importance of encouraging recycling to reduce waste disposal and the transition to sustainable materials management to support the reclamation of valuable secondary materials. If confirmed, I will plan to be actively engaged in EPA's DSW rulemaking efforts.

Without analysis how can EPA determine that SIP provisions related to start-up, shut-down, and malfunction are "substantially inadequate" for purposes of the Clean Air Act?

EPA's proposed SIP call to amend provisions applying to excess emissions contains 49 pages of analysis that comprehensively discuss each affected SIP provision of each affected state. There, EPA carefully explained its reasoning for proposing to find that a given provision is or is not "substantially inadequate" to satisfy the legal requirements of the CAA. Where EPA proposed to find that a provision is impermissible under the CAA, but the exact meaning of that provision was open to interpretation, the agency solicited comments from all parties including the affected state to determine whether EPA's reading of the provision was accurate or whether the state had an alternative interpretation that would render the provision permissible.

Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?

The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events and how the state chooses to revise the SIP to address excess emissions during SSM events, consistent with the requirements of the Clean Air Act. The preamble to the proposed action describes EPA's assessment of the potential impacts of the proposed SIP calls on sources. See "What are potential impacts on affected states and sources?" at 78 FR 12467.

Do you agree that policy changes are not enforceable or mandatory requirements of the EPA?

EPA agrees that policy changes are not enforceable or mandatory until the interpretations reflected in those changes have gone through the appropriate legal process, such as notice-and-comment rulemaking. EPA's interpretation of the CAA with respect to the treatment of excess emissions during SSM periods is expressed in a series of guidance documents issued in 1982, 1983, 1999, and 2001. While these guidance documents are not themselves binding on the states, EPA has consistently applied the SSM policy contained therein in a number of individual rulemaking actions that were subject to notice and comment. Therefore, because the SSM policy has undergone and survived the rigors of public scrutiny associated with the rulemaking process, and has previously been upheld by courts, EPA believes that the SSM policy is correct interpretation of the requirements of the CAA.

Has EPA done any analysis like it did for the NO_x SIP call to determine if the SIP provisions in question are threatening the NAAQS?

EPA has not based its proposed findings of inadequacy on a quantitative assessment that the specific SIP provisions in question resulted in a specific violation of the NAAQS. In fact, it is because of SSM exemptions that excess emissions during periods of SSM are not accurately accounted for in SIPs, with the result that even though the attainment and maintenance of the NAAQS is potentially compromised by SSM exemptions, there are few data readily available on which to conduct a quantitative assessment.

EPA argues that SSM prevents the enforcement of emissions limits. Isn't this circular since the validly approved SIP exempts such events from the emissions limits?

EPA's proposed action addresses existing SIP provisions with several types of deficiencies, including automatic exemptions from emissions limits and discretionary exemptions from emissions limits during SSM events. Because these types of exemptions are not valid under the CAA, EPA's approval of these types of provisions was in error. Reliance on such provisions has thus frustrated effective enforcement of emissions limits in SIPs. Other types of provisions addressed in the proposal also interfere with effective enforcement of emissions limits by purporting to prevent enforcement by EPA or citizens if the state elects not to enforce or to preclude the availability of penalties or injunctive relief for violations in enforcement actions by any party.

Were the existing SIP provisions in question legally approved and promulgated by EPA and the states? What is the legal basis for declaring a validly-approved SIP provision invalid after the fact?

Under CAA section 110(k)(5), EPA is authorized to require states to revise previously approved SIP provisions. In this instance, EPA has acknowledged that it should not have approved the provisions in the first instance, and thus is proposing to require the affected states to correct these provisions.

Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?

The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events and how the state chooses to revise the SIP to address excess emissions during SSM events, consistent with the requirements of the Clean Air Act. The preamble to the proposed action describes EPA's assessment of the potential impacts of the proposed SIP calls on sources. See "What are potential impacts on affected states and sources?" at 78 FR 12467.

Rulemaking is increasingly being accomplished through the use of consent decrees that commit the EPA to taking specific regulatory actions. The consent decrees agreed to by EPA and outside groups often commit EPA to specific actions and timeframes. If EPA is going to make specific regulatory commitments to outside groups, shouldn't there be an opportunity for Congress or the public to comment on these commitments before they are made, rather than having the opportunity to comment only after legally enforceable policy commitments are made by EPA?

Response: Most of these settlements are under the Clean Air Act, which provides the public, including any affected businesses, notice and the opportunity to comment on any consent order or settlement before it is final or filed with the court. In addition, while EPA may commit in settlement to promulgate a rule or standard required by statute, the substantive level or nature of that required action is determined through the rulemaking process, which offers ample opportunity for regulated entities to provide meaningful comment on the proposed regulation itself.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

It is often not feasible to operate or use pollution control equipment during SSM periods without causing damage to that equipment. Some types of pollution control equipment cannot operate at full efficiency during startup periods, and some facilities and equipment must use alternative fuels during startup periods that pollution control equipment was not designed to target. What steps will EPA take to avoid a one-size-fits-all approach to implementing this rulemaking? Why is the EPA proposing to take away the ability of states to use enforcement discretion for excess emissions resulting from startup, shutdown and malfunctioning periods? Does EPA think that states are abusing this authority?

EPA is not taking a “one-size-fits-all” approach in the February 2013 proposed rulemaking. Under the principles of cooperative federalism, the CAA vests air agencies with substantial discretion as to how their SIP provisions meet the legal requirements and objectives of the CAA. EPA is not prescribing to states exactly how they must implement the CAA, nor is EPA directing states to adopt particular control measures. Rather, in issuing a SIP call, EPA is requiring that states bring their SIPs into compliance with the legal requirements of the CAA but leaving discretion to the states to remove or revise impermissible provisions, consistent with CAA requirements. Implementation concerns would be more appropriately considered during the state's process of revising its SIP to remove illegal SSM-related provisions. EPA’s proposed rule also does not take away the ability of states to use enforcement discretion.

State Primacy

Do you agree that it was Congress’ intent for the States to play the lead role in relevant air quality regulatory decisions? Are you committed to having the EPA implement the Clean Air Act in a manner that reflected that intent?

Congress established the Clean Air Act as a system under which the EPA and States both have important roles in setting and implementing the Clean Air Act. Congress assigned different roles to EPA and the states, respectively, depending on the nature of the air pollution problem. If confirmed as Administrator, I am committed to ensuring that EPA continues to implement the Clean Air Act in partnership with state, local, federal and tribal governments, consistent with the Clean Air Act’s requirements.

States have the primary responsibility for implementing the environmental programs and regulations that EPA develops. Most States receive less than 20% of their overall budget from EPA, and in some cases, significantly less; yet EPA continues to adopt new regulations and programs without providing the States with commensurate funding. If confirmed, how will you balance the increasing demand for the State’s services with the decreasing availability of the resources needed to implement EPA’s ever expanding programs?

Response: Having over two decades of experience at the State and Local level, I recognize and appreciate the need for funding to States. If I’m confirmed, I will work with you and others to find innovative solutions to balance the need for federal funding to States with the need to continue important State efforts.

Tier 3

Why did EPA withhold the findings of its backsliding study until the Tier 3 rule was released?

The proposed Tier 3 rule is independent of the anti-backsliding study required by sections 211(q) and 211(v) of the Clean Air Act. EPA is currently conducting analysis and peer review for the anti-backsliding study and is not currently prepared to release it.

Generally, EPA shows the results of its studies, but withholds the modeling. Why is this a common practice of EPA?

It is unclear to which modeling this question refers. When EPA runs the IPM model for analysis of power sector rules, for example, it places model output in the docket for public review.

Last year, EPA identified 36 marginal ozone nonattainment areas that must attain by 2015. This means 3 clean summers, 2013 through 2015. Tier 3 will not be effective during this period. There are not many areas with attainment dates after 2015. Do they all need Tier 3? Do we need a national Tier 3 program to help a few areas?

Reductions in motor vehicle emissions from the proposed Tier 3 standards would improve air quality across the country, helping areas to attain and maintain the NAAQS. The proposed standards would significantly decrease ambient concentrations of harmful pollutants such as ozone, PM_{2.5} and air toxics by 2030, and would immediately reduce ozone in 2017 when the proposed sulfur controls take effect. NO_x emissions would be reduced by about 284,000 tons, or about 8 % of emissions from on-highway vehicles, in 2017 alone. In 2030, when Tier 3 vehicles would make up the majority of the fleet, NO_x and VOC emissions from on-highway vehicles would be reduced by about 525,000 tons and 226,000 tons, respectively, or about 25%. By 2050, when Tier 3 vehicles would make up almost the entire fleet, NO_x and VOC would be reduced by nearly 40% for on-highway vehicles.

EPA's Tier 3 proposed rule would change the certification fuel that is used to test vehicles and engines for compliance with Clean Air Act standards. EPA is proposing to mandate that gasoline with 15% ethanol be used as certification fuel. Your rule describes this action as “forward looking” while admitting that E15 is now only commercially available in a limited number of fuel retailers. Is it appropriate for EPA to use its Tier III regulation to compel automakers to produce E15 vehicles? Why is EPA making this change now?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether we should finalize E10 for certification test fuel.

Wouldn't it be prudent for EPA wait to see how E15 performs in the marketplace prior to mandating its use as the new certification fuel?

EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA will fully consider comments from stakeholders and the public before making a final decision.

If E10 is now the predominant gasoline blend, why wouldn't EPA consider this fuel first as the new certification fuel?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time, EPA is seeking comment on whether the agency should finalize E10 for certification test fuel.

Last year, the D.C. Circuit ruled that petitioners did not have standing to challenge EPA's decision to approve E15. The court did not rule on the merits, but judges on the panel expressed concerns over EPA's interpretation of its Clean Air Act authority to grant a waiver for E15. Different affected parties have filed for certiorari at the Supreme Court. Will EPA wait to see what happens to these petitions prior to finalizing any changes to certification fuel? Would EPA consider withdrawing the proposed changes for E15 certification fuel if the court grants cert?

During the rulemaking process EPA expects to receive helpful comments on the issue of what level of ethanol to use in the fuel used for testing motor vehicles. It is premature to judge now what action EPA will take in the rulemaking based on the potential action the Supreme Court might take on petitions for certiorari on the D.C. Circuit's decision on review of the E15 waiver. This is especially the case as the issues raised in the petitions to the Supreme Court involve jurisdiction for judicial review, and not the merits of the E15 waiver itself.

Does it concern you that the D.C. Circuit expressed serious concerns over EPA's interpretation of the Clean Air Act waiver provision, both at oral argument and in a dissenting opinion? How should this affect EPA's approach to future waiver requests?

In the E15 waiver decision EPA explained in detail its views on the authority to grant a partial waiver. The D.C. Circuit later rejected petitions for review on the grounds that the petitioners did not have standing, and the Court did not decide on the merits of EPA's waiver decision. While one Judge expressed his view that EPA lacked authority for a partial waiver, there was no decision by the D. C. Circuit on this issue. In any future waiver proceeding EPA will carefully consider this issue of authority to the extent it arises.

EPA has been working on a Tier 3 rule for some time. When was the decision made to propose E15 as a certification fuel? Please provide the committee with a list of all meetings or contacts with non-governmental entities, as well as any associated records and documents (whether internal EPA records or documents or otherwise) with regard to the issue of proposing E15 as a certification fuel prior to the release of the proposed rule.

Consideration of the need to change the certification test fuel to include ethanol goes back to at least 2006 as ethanol use began increasing dramatically. During this multi-year period, the topic was discussed on numerous occasions with all relevant stakeholders, including the vehicle manufacturers, refiners, ethanol producers, nonroad engine manufacturers, the California Air Resources Board, State organizations, and NGOs. EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA further anticipates that the agency will again have numerous discussions with many stakeholders in the post-proposal timeframe prior to making any decision for the final rule, and all meetings and comments from stakeholders will be placed in the rulemaking docket. EPA will fully consider comments and feedback from stakeholders and the public before making a final decision. With regard to your request for documents, EPA staff inform me that the appropriate protocol is to make such a request through a separate letter to the agency. I will ask that the agency respond to any such request.

Please provide the committee with a detailed written analysis regarding how finalizing E15 as a certification fuel would affect EPA's assessment of future waiver requests for higher ethanol blends under Clean Air Act section 211(f)(4).

Waiver requests under section 211(f)(4) for ethanol blends higher than E15 would need to show that the fuel or fuel additive at issue will not cause or contribute to the failure of an engine or vehicle to achieve compliance with the emission standards to which it has been certified over its useful life. The assessment would look, for example, at the levels of emissions when tested on the higher ethanol blend compared to emissions when tested on the fuel used for new vehicle certification. If E15 were the certification fuel, then for those vehicles E15 would be used as the reference or baseline test fuel. This would not change the issue that would be before EPA – determining whether the higher ethanol blend caused or contributed to the vehicle violating the emissions standards.

Has EPA ever previously required changes in certification fuel prior to the introduction of a fuel into the mass market?

It has been more than 10 years since any changes have been made to federal certification test fuel, but it is time to change the certification fuel to reflect the fact that ethanol is found in most retail gasoline today. In an effort to focus on the longer term, EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA will fully consider comments from stakeholders and the public before making a final decision.

The Tier 3 rule solicits comments on various alternative approaches in transitioning to E15 as certification fuel. Would E10 be an appropriate certification fuel since it appears to meet EPA's criteria of that test fuel that "better align(s) with the current and projected in-use fuel"?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol

concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether we should finalize E10 for certification test fuel.

Would your estimates of the benefits of the Tier 3 proposed rule appreciably change if E10 was selected as the new certification fuel?

Selecting E10 as the certification fuel would not impact the exhaust emissions benefits of the proposed Tier 3 rule. However, it could effectively increase the stringency of the evaporative emission standards if the volatility of the E10 certification fuel were to be set at 10 psi, consistent with in-use fuel.

Have you considered whether the proposed tailpipe and evaporative standards are appropriate if E10 is the new certification fuel, or would they need to be adjusted?

EPA does not believe there would need to be any adjustment to the exhaust emission standards. However, it could effectively increase the stringency of the evaporative emission standards if the volatility of the E10 certification fuel were to be set at 10 psi, consistent with in-use fuel.

E15 is not the certification fuel in California. It is E10. I understand that California does not permit its gasoline to be E15. EPA has touted national uniformity in many areas of mobile source regulation. Why have you proposed E15 as a federal certification fuel when it cannot be used as such in California?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of this uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether the agency should finalize E10 for certification test fuel. If EPA finalizes E15, it intends to allow use of E10 as the certification test fuel through 2019.

Your Regulatory Impact Analysis assumes that E15 utilization for 2001 and later model vehicles will be 50% by 2017, about 80% by 2019 and 90% by 2020. You also project that use of E15 will be substantially higher in Reformulated Gasoline (RFG) areas, which are major population areas by Clean Air Act definition – EPA projects nearly 75% of gasoline will be E15 in RFG areas by 2017. Yet E15 is now almost entirely absent from the market by EPA’s own assessment. Are you assuming, then, that nearly all MY 2001 and later car owners will be using E15 even if automobile companies don’t warrant such cars for using E15? Why do you assume such levels of consumer acceptance?

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

EPA data indicates that pre-MY 2001 vehicles and other equipment that cannot use E15 were almost 40% of the gasoline market in 2010. How will EPA ensure that E10 will be available for older model cars less than a few years from now?

EPA is not mandating E15 and the market will determine what among the range of legal fuels are sold to satisfy customer demand. Regardless, since E15 is currently distributed from less than 20 of the approximately 150,000 retail stations nationwide, this would not appear to be a near-term concern. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Doesn't EPA analysis of RFG areas effectively project that 3 out of 4 retail outlets will have to be selling E15 in major cities in less than four years?

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Your Regulatory Impact Analysis assumes that E15 utilization in nonroad equipment (like construction equipment, lawnmowers and chain saws) will ramp up from zero percent in 2017 to 100 percent by 2030. Yet, to date, EPA has not acted to waive restrictions on using E15 for any nonroad vehicle or piece of equipment. On what analysis is this E15 penetration rate for nonroad vehicles based?

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Please detail what other regulations or EPA determinations will be necessary to force this amount of E15 into the nonroad sector within the time period projected.

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal. The Tier 3 proposal has no bearing on fuels used in the nonroad sector. The Tier 3 proposal does not change the fact that the partial waiver for E15 does not allow for its use by nonroad equipment.

Is EPA currently considering issuing a Clean Air Act section 211(f)(4) waiver for use of E15 blends in nonroad equipment, motorcycles and other vehicles and equipment not covered by current waivers?

No, there is no such action under consideration by the Agency.

Doesn't this mean that EPA considers E85 not to be a viable option for meeting renewable fuel standard requirements?

EPA considers a wide range of renewable fuel types as the agency conducts assessments for the annual RFS volume standards as required under the CAA. E85 is one of several means that can be used to deliver renewable fuel volumes required to meet the renewable fuel standard requirements. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Recent reports on the proposed Tier 3 rule have warned that it could actually increase greenhouse gas emissions from the production of gasoline due to the energy-intensive equipment that would be needed to comply with the rule. Would you support rescinding the proposed Tier 3 rule if compliance with the rule was found to increase greenhouse gas emissions?

The proposed Tier 3 standards would result in very large emission reductions from both new and existing vehicles. The additional gasoline hydrotreating would also cause a relatively small increase in greenhouse gas (GHG) emissions at the refinery due to the additional gasoline hydrotreating. EPA analyzed these impacts in detail using our refinery-by-refinery analysis. The relatively small increase in GHG emissions from refining would be offset though reductions in vehicle emissions of GHG pollutants (methane and N₂O) from the improved operation of the vehicle catalysts.

Is it EPA's intention to use the E15 cert fuel to force the automakers to produce E15 capable vehicles? Is it appropriate for EPA to use its Tier III regulation to force autos to produce E15 capable vehicles? Is the cost of hardening vehicles for E15 included in the Tier III cost calculations?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since the proposed Tier 3 standards would phase in from 2017-2025 this would mean in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether the agency should finalize E10 for certification test fuel. Many of the vehicle manufacturers are already warranting their new vehicles to operate on E15. The change of certification fuel to E15 would thus have little impact on vehicle hardware, but would ensure manufacturers design their vehicles to account for emission impacts of ethanol concentrations up to E15 over the life of the vehicle.

In 2009 EPA issued a set of principles on TSCA modernization. In 2010 EPA participated in the House Energy and Commerce Committee's dialogue on discussion draft TSCA legislation. Over the last

several years, EPA has provided technical support to both Senate Democratic and Republican staff on TSCA reform matters. But it's my understanding that EPA has not taken a public position on any of the House or Senate TSCA reform bills introduced to date. Do you anticipate that EPA will take a position on TSCA legislation going forward? What is the Administration's view of its role in the TSCA debate? Will EPA continue to provide just technical support, or will EPA provide more leadership in the TSCA debate under your administration?

EPA's TSCA principles set out several key objectives for reform. TSCA is a complex statute, with many different programs intended to address new and existing chemicals. What are EPA's most important objectives in reforming TSCA?

Most of the concerns raised about TSCA have focused on its "existing chemicals" program, not its "new chemicals" program. Do you agree that EPA's new chemicals review program is successful? What level of confidence does EPA have in its new chemical review program?

Response (to the three questions above): While I am not familiar with any position that the Administration may or may not take, I do agree with you that our chemical safety laws are antiquated and need to be reformed. Furthermore, I understand that the TSCA law, as written in 1976, creates challenges with the new and existing chemicals program.

I understand that the Agency's principles for TSCA reform are:

Principle No. 1: Chemicals Should be Reviewed Against Safety Standards that are Based on Sound Science and Reflect Risk-based Criteria Protective of Human Health and the Environment.

EPA should have clear authority to establish safety standards that are based on scientific risk assessments. Sound science should be the basis for the assessment of chemical risks, while recognizing the need to assess and manage risk in the face of uncertainty.

Principle No. 2: Manufacturers Should Provide EPA with the Necessary Information to Conclude That New and Existing Chemicals are Safe and Do Not Endanger Public Health or the Environment.

Manufacturers should be required to provide sufficient hazard, exposure, and use data for a chemical to support a determination by the Agency that the chemical meets the safety standard. Exposure and hazard assessments from manufacturers should be required to include a thorough review of the chemical's risks to sensitive subpopulations

Where manufacturers do not submit sufficient information, EPA should have the necessary authority and tools, such as data call in, to quickly and efficiently require testing or obtain other information from manufacturers that is relevant to determining the safety of chemicals. EPA should also be provided the necessary authority to efficiently follow up on chemicals which have been previously assessed (e.g., requiring additional data or testing, or taking action to reduce risk) if there is a change which may affect safety, such as increased production volume, new uses or new information on potential hazards or

exposures. EPA's authority to require submission of use and exposure information should extend to downstream processors and users of chemicals.

Principle No. 3: Risk Management Decisions Should Take into Account Sensitive Subpopulations, Cost, Availability of Substitutes and Other Relevant Considerations.

EPA should have clear authority to take risk management actions when chemicals do not meet the safety standard, with flexibility to take into account a range of considerations, including children's health, economic costs, social benefits, and equity concerns.

Principle No. 4: Manufacturers and EPA Should Assess and Act on Priority Chemicals, Both Existing and New, in a Timely Manner.

EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on relevant risk and exposure considerations. Clear, enforceable and practicable deadlines applicable to the Agency and industry should be set for completion of chemical reviews, in particular those that might impact sensitive sub-populations.

Principle No. 5: Green Chemistry Should Be Encouraged and Provisions Assuring Transparency and Public Access to Information Should Be Strengthened.

The design of safer and more sustainable chemicals, processes, and products should be encouraged and supported through research, education, recognition, and other means. The goal of these efforts should be to increase the design, manufacture, and use of lower risk, more energy efficient and sustainable chemical products and processes.

TSCA reform should include stricter requirements for a manufacturer's claim of Confidential Business Information (CBI). Manufacturers should be required to substantiate their claims of confidentiality. Data relevant to health and safety should not be claimed or otherwise treated as CBI. EPA should be able to negotiate with other governments (local, state, and foreign) on appropriate sharing of CBI with the necessary protections, when necessary to protect public health and safety.

Principle No. 6: EPA Should Be Given a Sustained Source of Funding for Implementation.

Implementation of the law should be adequately and consistently funded, in order to meet the goal of assuring the safety of chemicals, and to maintain public confidence that EPA is meeting that goal. To that end, manufacturers of chemicals should support the costs of Agency implementation, including the review of information provided by manufacturers.

I look forward to working with you, and others on these reforms.

In 2012 EPA identified 83 chemicals as priorities for further assessment by the Agency. Earlier this year EPA released draft targeted assessments on five of these chemicals. What has EPA learned to date from the TSCA Work Plan chemical assessment process and in particular? How is the TSCA Work Plan chemical program relevant to the debate on TSCA reform?

Response: While I am not familiar with the specifics of the assessments, I can tell you that the Agency and I are committed to ensuring the American public that the chemicals manufactured and used in the products that they and their families use are safe.

In 2010, EPA announced a very significant policy shift in its interpretation of the CBI provisions under TSCA. This policy shift abandoned more than 35 years of EPA's legal and policy interpretation and adopted a very narrow interpretation as to when claims for confidential chemical identity will receive trade secret protection under TSCA -- significantly harming the protection of legitimate confidential business information. The Agency has never responded to public comment on that 2010 CBI policy announcement. Do you believe that President Obama's Strategy on Mitigating Theft of U.S. Trade Secrets should affect EPA's 2010 CBI policy change? If so, how? As Administrator, do you intend to pursue regulations implementing the 2010 CBI policy change?

Response: I strongly support this Administration's efforts to increase the public's access to critical chemical information and to reduce unwarranted confidentiality claims by industry. However, if a company has a legitimate confidential business information claim, EPA takes very seriously its commitment to protect that information so as not to cause harm to the company. Please be assured that I share this commitment and look forward to working with the Committee on this issue.

In a January 23, 2013 letter, Senator Vitter asked EPA to provide the dates EPA submitted its Spring 2012 Unified Agenda and Fall 2012 Unified Agenda to the Office of Information and Regulatory Affairs (OIRA). In its April 10, 2013 response, EPA stated that they complied with OIRA's data call letters. Please provide the specific dates EPA submitted its 2012 Spring Unified Agenda and Fall 2012 Unified Agenda to OIRA.

Response: The Office of Air and Radiation complied with all internal deadlines related to the Regulatory Agenda. If confirmed, I will respect the deadlines specified in OIRA call letters.

EPA is increasingly using ""willingness-to-pay"" (WTP) surveys to supplement the expected benefits of regulatory actions with substantial projected costs. Two recent examples include the proposed Clean Water Act section 316(b) requirements for cooling water intake structures (CWIS) and total maximum daily load (TMDL) cleanup plans for nutrients and sediments in watersheds. EPA estimated CWIS costs at over \$300 million, although the final rule could change significantly. EPA estimated TMDL

capital costs of \$28 billion and an additional \$2.7 billion dollars per year for operating and maintaining costs. The surveys are intended to represent what price people might assign to a theoretical effect (e.g., having a healthy fish population) of a proposed rule from which they gain no direct benefit. Thus the effects are a hypothetical and subjective justification for the proposed rule. As such, it would be inappropriate for EPA to count the results of these surveys as actual monetary benefits for a proposed rulemaking. Economic experts have concluded that there are very few instances in which such a complicated subjective tool can be used with any degree of reliability. Following a National Oceanic and Atmospheric Administration (NOAA) blue-ribbon panel review of contingent valuation surveys, a Nobel laureate economist on the panel noted that ""many departures from the guidelines or even a single serious deviation would, however, suggest unreliability prima facie."" Should EPA address public concerns about the direction of EPA's monetization of these survey results and their use in benefit calculations for proposed rulemakings? What steps will you take as Administrator to ensure that EPA's assessment of economic costs and benefits of its proposed rules meet standards for high quality, reliability, and reproducibility?

Response: My understanding is that stated preference is a tool that EPA has used in the past and that the appropriate use of stated preference, and the challenges, are discussed in the Agency's peer-reviewed "Guidelines for Preparing Economic Analyses". If confirmed, I am committed to ensure that EPA's economic studies are conducted in a high quality fashion, consistent with best economic practices.

As you know, EPA has granted a waiver to California for its Zero Emission Vehicle (ZEV) program. As a general matter, what is your view on sales mandates, or, in this case, using environmental laws to require that automakers sell a certain number of a particular type of vehicle? Do you believe that a manufacturer should be required to sell the mandated vehicles at a loss if that is the only way to meet the required Government sales volume? What is EPA's role in assessing the efforts of states that adopt this program to create the infrastructure, incentives, and other mechanisms that will help this program be successful? What recourse do automakers have if EPA does not exercise this oversight?

EPA's waiver decisions are governed by section 209(b) of the Clean Air Act, which requires the Administrator of EPA to grant a California waiver request unless the Administrator makes any of the following three findings:

- California's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious,
- California does not need its standards to meet compelling and extraordinary conditions, or
- California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Clean Air Act.

At the direction of Congress, EPA has contracted with the National Academy of Sciences to assist in the development and eventual peer review of the IRIS assessment of inorganic arsenic. Recently, the newly formed NAS panel on arsenic convened a workshop to explore answers to some key science policy questions. In advance of the convening of the NAS panel, the EPA's National Center for Environmental Assessments conducted a workshop in December 2012. A member of the NCEA staff at

that workshop seemed to trivialize the impact of the NAS work in this matter and stated that although IRIS is re-writing the document, several old sections will be used, and the bottom-line conclusion is not going to change. This statement seems to summarize the current position of the IRIS program. On the one hand, Dr. Olden, the recently named director of NCEA, makes claims of a new, improved and transparent IRIS process but, on the other hand, this approach does not appear to have devolved to the staff, leaving one to question whether real change in the program is actually occurring. What steps do you plan to take to ensure the IRIS program reflects a thorough and objective review of the science and develops hazard assessments that can withstand rigorous independent scrutiny?

Response: If I'm confirmed, the first step I will take to understand the IRIS review process is getting a full and robust briefing from staff on the current status of their work in the program. I will then work with other scientific groups, industry and health advocates to understand their perspectives.

In the April 9 letter, EPA recognizes that it only has authority to regulate renovation activities in P&C buildings if it finds that renovations in those structures create a lead-based paint hazard. EPA also states that it is in the "very early stage of evaluating approaches" in determining whether such a lead hazard exists in P&C buildings. EPA also recognizes that, based on a litigation settlement agreement with the Sierra Club, EPA has deadlines in place to propose and finalize regulations for renovation activities in commercial buildings. In short, EPA has deadlines in place to establish regulations for renovations activities in P&C buildings. But, it does not have deadlines in place to guide the fundamental decision on whether a hazard even exists. Why does EPA have a schedule to develop regulations for renovation activities in commercial buildings, but does not have a schedule to determine if any lead paint hazard even exists in these buildings in the first place?

Response: I support the Agency's goals to reduce childhood lead poisoning during renovation and repair activities, including in public and commercial buildings if they pose a risk. If confirmed, the Agency and I will work with you and other members of the Committee, as well as the range of entities who may be affected by the Agency's efforts on this important issue.